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ABSTRACT

This textbook for high school students on law in Utah supplements "Street Law: A Course in Practical Law," a program in law-related education in use across the United States. The introduction explains the meaning of law, how laws are made in Utah, and the functions of the state court system. Following chapters elucidate the branches of law, including criminal, juvenile, consumer, family, and housing law. The book also covers torts, rights, and responsibilities. Each chapter focuses on the special features of Utah law, the legal process, and the state agencies that create and enforce the law. In the section on criminal law, the descriptions of crimes provide specific definitions, aggravating circumstances, and punishments. The chapter that covers housing law presents samples of real estate contracts that illustrate the technicalities of the law. At the end of the book is a glossary of the legal terms used in the text. (JD)

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PRACTICAL LAW IN UTAH

THE UTAH LAW-RELATED EDUCATION PROJECT
AND
THE UTAH STATE BAR COMMITTEE ON LAW-RELATED EDUCATION AND LAW DAY

Fourth Edition

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PRACTICAL LAW IN UTAH, Fourth Edition
Utah Supplement to Street Law

The Utah Law-Related Education Project

and

The Utah State Bar
Committee on Law-Related Education and Law Day

Salt Lake City, Utah
December, 1993

TABLE OF CONTENTS

	Page
Preface and Acknowledgements	v
Law-Related Education Project, Inc. Board of Trustees	vii
Utah State Bar Committee on Law-Related Education and Law Day	viii
CHAPTER ONE	
INTRODUCTION TO UTAH STREET LAW	1
I. Introduction	1
II. What is the Law?	2
III. Who Makes the Law?	4
IV. Types of Law: Criminal Laws and Civil Laws.	13
V. The Court System	16
VI. The Role of the Lawyer	18
Appendix	
"Where You Live" Questions and Answers	24
CHAPTER TWO	
CRIMINAL AND JUVENILE JUSTICE	29
Criminal Law Section	29
I. Introduction	29
II. General Provisions	29
III. Principles of Criminal Responsibility	30
IV. Punishments	33
V. Offenses Against the Person	36
VI. Offenses Against Property	40
VII. Offenses Against the Family	42
VIII. Other Offenses	42
IX. Traffic Offenses	43
X. Drug Offenses	43
XI. The Criminal Justice Process	44
Appendix	
Organizations to Know	46
"Where You Live" Questions and Answers	49
Juvenile Law Section	55
I. Introduction	55
II. Entering the System	56
III. Disposition	58
IV. Treatment of Juveniles as Adults	59
V. Neglected and Dependent Children	61
VI. Court Records	61
Appendix	
Organizations to Know	63
"Where You Live" Questions and Answers	64

CHAPTER THREE

TORTS 65

I. Introduction 65
II. Intentional Torts 66
III. Negligence 70
IV. Strict Liability 72
Appendix
Organizations to Know 75
"Where You Live" Questions and Answers 76

CHAPTER FOUR

CONSUMER LAW 83

I. Introduction 83
II. Where Consumers Can Have Their Complaints Heard 83
III. Utah Consumer Sales Practices Act 86
IV. Other Frequent Sources of Consumer Misery and How to Avoid Them 86
V. Contracts 89
VI. Consumer Credit 90
VII. Default and Collection Practices 94
VIII. Marriage and Divorce: Their Effect on the Consumer 96
IX. Automobile Registration and Insurance 97
Appendix
Organizations to Know 98
"Where You Live" Questions and Answers 100

CHAPTER FIVE

FAMILY LAW 103

I. Introduction 103
II. Getting Married 103
III. Ending Marriage 104
IV. Rights and Duties of Parents and Children . . 107
V. Cohabitant Abuse 110
Appendix
Organizations to Know 111
"Where You Live" Questions and Answers 114

CHAPTER SIX

HOUSING LAW 121

I. Introduction 121
II. Landlord/Tenant Relations 121
III. Mobile Homes in Mobile Home Parks 136
IV. Home Ownership 136
Appendix
Organizations to Know 147
"Where You Live" Questions and Answers 153

CHAPTER SEVEN

INDIVIDUAL RIGHTS AND RESPONSIBILITIES 169

I. Introduction 169
II. Utah Cases Decided Under Federal Laws 169
III. Individual Rights and Liberties Under Utah Law 182

Appendix
Organizations to Know 186
"Where You Live" Questions and Answers 187

GLOSSARY 195

PREFACE AND ACKNOWLEDGEMENTS

Street Law: A Course in Practical Law has been used in Utah secondary schools as both a text in law education classes and as a reference book for teachers since early 1977. While Street Law has been a valuable tool in the classroom, it became apparent that a more definitive text on basic Utah law and its procedures in particular would be useful not only for educators in public school and community adult education classes, but for the general citizenry as well. Citizens having an understanding of practical law will realize that the law can be an effective tool in their behalf in certain situations. They will also be better able to avoid and prevent unnecessary problems with the law.

The first edition of Practical Law in Utah, published in 1979, was written with the intention of partially fulfilling these needs. The second and third editions, published in 1985 and 1989, were the result of numerous requests for updated versions of the book. They included answers to the "Where You Live" boxes as found throughout the Street Law text, a more extensive glossary, and a list of main organizations, agencies, and groups to use as resources in the State of Utah. The fourth edition of Practical Law is again an update of Utah law and is the most comprehensive of all previous efforts. It includes not only the same sections as the third edition, but a tort section as well. It is suggested, however, that you use your own local agencies and organizations; i.e., Division of Family Services, bar associations, county jails, etc., because many examples listed are for the Salt Lake area only. It must be emphasized, however, that this book is not intended to serve as a substitute for advice required of a professional attorney.

No attempt has been made in this volume to treat every area of the law. For example, such subjects as corporations, insurance, international law, tax, estate planning, and environmental law are not considered. Some of these subjects do not lend themselves to the brief and general approach used here; others have relatively little practical value for the average citizen.

The Utah Law-Related Education Project and the Utah State Bar Committee on Law-Related Education and Law Day jointly contributed to the updating of this edition but would have been unable to realize its completion without the assistance of members of the Utah State Bar. Each chapter designates its authors but because of the many hours they contributed, we offer thanks again to Judge Monroe G. McKay, Ralph R. Mabey, Brent Cameron, William Oswald, Kate Lahey, Jerrold Jensen, Gregory G. Skordas, Charles F. Loyd, Jr., Steven Kahnhausen, Patricia A. DeMichele, Kim Rilling, Gordon K. Jensen, Dorothy C. Pleshe, Ron Nehring, David S. Dolowitz, Suzanne Mellor, Douglas Matsumori, Ross Anderson, and Linda M. Jones.

Contributing to the editing, to the updating of the "Where You Live" answers for each chapter, and to the typing of the manuscript were Michelle Mladejowski, Janet Hilliard, Kathy Dryer, Kim Frankovich, and Virginia Lee. Many thanks go to Nancy Mathews and other staff members of the Utah State Office of Education for their assistance in the final preparation of this manual, to Robert Winkelkotter for his creative cover and division pages, and to Sharon Janke and her publication staff for their cooperation in printing this book.

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and
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Law-Related Education & Law Day
December, 1993

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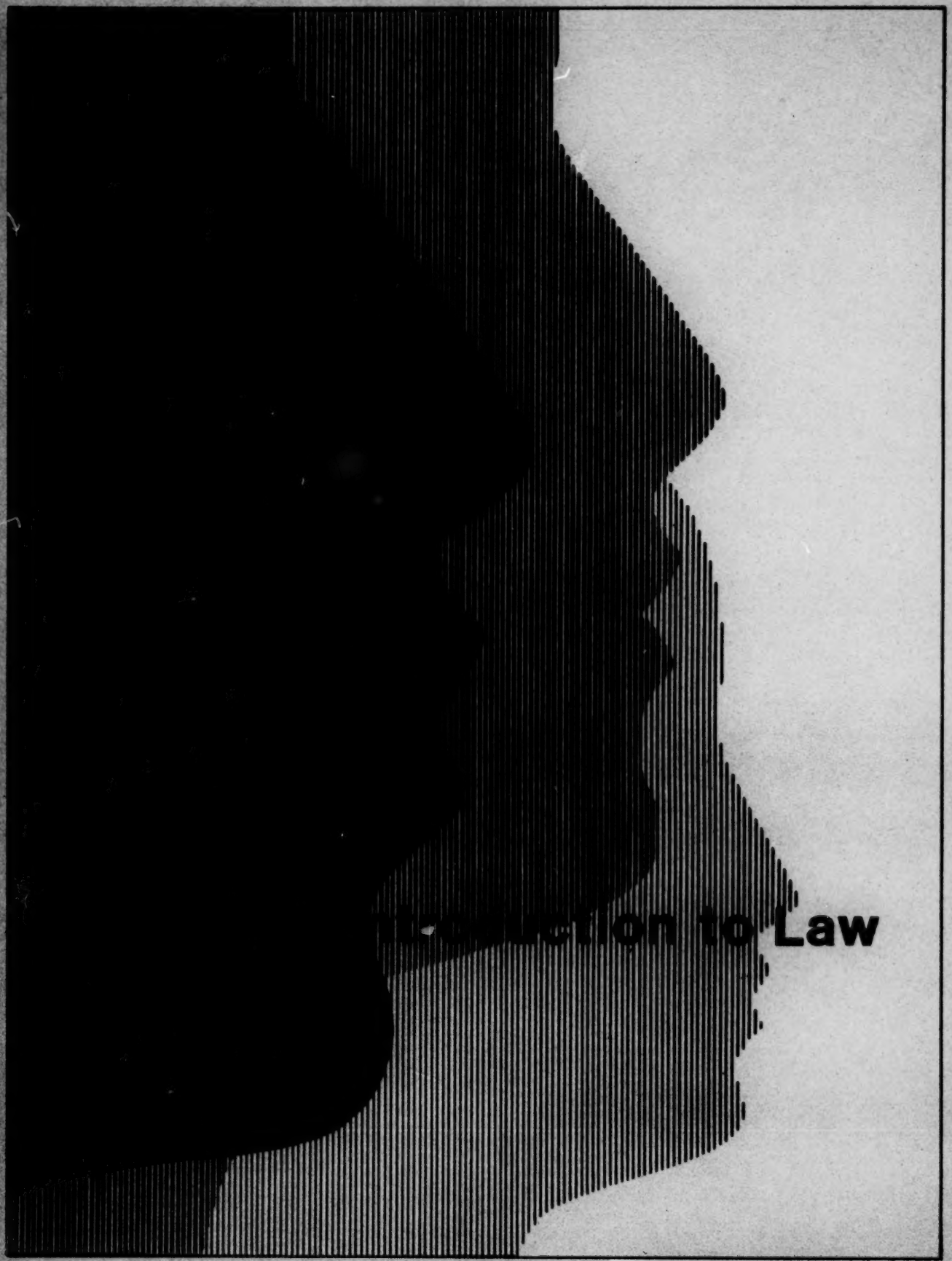

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CHAPTER ONE

INTRODUCTION TO UTAH STREET LAW*

I. INTRODUCTION

The law has something to say about almost everything a person does -- from living to dying. For example, the law tells us how to enter into valid agreements with other people, and the law sets out basic rules for getting along with other people. Usually, the parties who enter into an agreement have roughly the same understanding about the terms of their agreement, and they do what they promised to do. Similarly, most of us don't do things that upset the people around us or interfere with what others want to do.

But if we are careless in resolving the details of our agreements (especially if the agreement is complicated or if the agreement is in effect for a long time), we may wind up with a dispute with the other party. That other party might be a parent, a friend, or a stranger. If we can't settle the dispute ourselves, we can ask the law to decide which version of the agreement is the "correct" version. The law can even order police officers to help the persons on the "correct" side to enforce the parties' agreement.

If someone lies about part of the agreement or just plain refuses to keep a promise, the law can get involved. When an innocent party wants help in forcing another person to keep a promise, the innocent party can either go to court or try to solve the problem another way.

If we dump our garbage in public, if we park our car in the middle of the road, if we make too much noise, or if we do other things which interfere with or harm others, the law may insist that we stop and may even make us pay money to compensate the persons we bothered or hurt. These legal remedies have two purposes: (1) they help those whose legal rights were violated; and (2) they make everyone think twice before engaging in similar harmful conduct in the future.

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*The Introduction to this chapter was written by Judge Monroe G. McKay, United States Court of Appeals, Tenth Circuit. The remainder of the chapter was written by Ralph R. Mabey, former United States Bankruptcy Judge and Assistant Professor of Management, University of Utah College of Business, and current partner in the law firm LeBoeuf, Lamb, Leiby and MacRae, by Brent Cameron and by William Oswald, Attorneys at Law. This chapter has been updated and edited for the fourth edition by Kate Lahey, Director of Legal Writing, University of Utah College of Law.

The course in Street Law is designed to make you aware of the main areas of the law that you may encounter in your personal life, and to show you how laws are made. While much of this course explains what to do if you become involved with the law, we also hope that the Street Law course will help you understand the "rules of the game," so that you can avoid the expense and pain of running up against the law.

This course is not, however, just a course about "getting your own way." The law gives us certain rights, but it also imposes certain legal obligations. By setting up a system that both recognizes our rights and requires us to honor our legal obligations, society tries to give each of us as much room as possible, while still respecting and protecting individual rights. If someone violates your rights or the rights of others, the law gives society the means to punish that person.

If you're like most people, you will eventually find yourself involved in the formal machinery of the law. You might encounter the law through some interaction with a police officer, an administrator, a lawyer, or a judge. This course can improve your understanding about how the legal process works, and what your rights and obligations are.

II. WHAT IS THE LAW?

How loud is too loud to play your stereo? If your new stereo is a lemon, must the manufacturer replace it? If the stereo shorts out and burns your house down, will the manufacturer be responsible for the damage to the house? If a customer fails to ask, does a seller have to tell the customer that a used stereo has some serious defects? Is it a crime to pay for a stereo with a check written on an overdrawn account?

The law is a set of rules and procedures designed to answer questions like these fairly. Naturally, what is fair often depends upon the facts of each case. Therefore, part of the law is concerned with the gathering of facts (called "evidence") and weighing the evidence to determine whether it will make a difference in the treatment an individual receives. For instance, if the facts show that someone wrote a bad check to defraud a creditor, it would be fair for the law to treat this person more severely than those persons who overdraw their accounts accidentally. Similarly, it might make a difference if the stereo seller actually lied to a customer about the defective stereo, instead of just keeping quiet. If a stereo was carelessly manufactured in such a way as to make it likely to short out and cause a fire, perhaps the law should treat that manufacturer differently from a manufacturer who was more careful in the manufacturing of its stereos.

The facts are often conflicting and difficult to figure out, and a jury may hear the evidence and then spend hours discussing the evidence and trying to determine whose version of the facts is accurate. Even when the facts are clear, it is sometimes hard to decide on the best legal rule to apply to those facts.

For instance, suppose a gas station attendant is robbed. Under Utah law, a robber who threatens someone with a gun is subject to a greater penalty than a robber who does not use a gun. But suppose the gas station attendant thought the robber had a deadly weapon, but really the robber was only using a toy pistol. Should the robber still suffer the greater punishment? In Utah, the answer is "yes." The robber would still be guilty of "aggravated robbery," not just robbery, even though the robber used only a toy pistol. The reason for this rule is that the gas station attendant would be just as fearful for his life if the robber pointed a real-looking toy gun at him as he'd be if the robber actually pointed a real gun at him. On the other hand, there seems to be a smaller chance of danger and injury if the robber uses only a toy gun. Do you think the Utah law is fair?

It is often hard to decide which are the true facts and which is the fairest rule to apply to the facts. That's why law libraries are stacked to the ceiling with thousands of books containing the judgment of legislatures and judges about a seemingly endless variety of legal questions. The problem of making and applying the law consistently is one of society's hardest and most important problems. How would you apply the law to the following problem?

Problem No. 1

Appleby is standing under a "No Smoking" sign at a local gas station while he pumps gas into his own car. He lights a cigarette, which causes the gas station and half the city block to blow up. In Utah, it is against the law under certain circumstances to cause a catastrophe such as an explosion, fire, or the collapse of a building. If a person causes the catastrophe knowingly, that person is guilty of a serious crime (a second-degree felony), and can be sentenced to a maximum punishment of more than one year. If the catastrophe is caused recklessly, the crime is a less serious misdemeanor and carries a maximum punishment of less than one year. If the catastrophe is caused only negligently or carelessly or inadvertently, it would be no crime at all under this particular Utah law.

Do you think Appleby is innocent, or do you think he committed a crime under Utah's catastrophe law? If you think Appleby committed a crime, was his crime a felony or was it a misdemeanor? Explain your reasoning.

III. WHO MAKES THE LAW?

Laws are made by our elected officials, judges, and administrative agencies. They make the law within the guidelines laid down by our state and federal constitutions. Laws affect almost every part of our lives, and the making of completely fair laws is extremely difficult -- sometimes impossible. Therefore, it is crucial that the laws be made by the best people available.

A. The People's Involvement in Making the Law

In our democratic government, citizens have a right to participate in the making of laws. The United States Constitution guarantees our right to vote, our right to seek and hold public office, and our right to have access to the court system. These constitutionally guaranteed rights are the cornerstones of citizen involvement in government. Other methods of citizen involvement include the citizen initiative, referendum, writing letters to government officials, conversing with elected or appointed officials, demonstrating, and lobbying. Each of these methods is protected by the First Amendment guarantees of free speech and the right to petition the government for a redress of grievances.

Public opinion is almost always a major factor in the formulation of laws (including the rules and regulations of governmental agencies). Elected officials are, of course, dependent upon the vote of those they represent, and these officials usually go to great lengths to discover how the majority of their constituents feel about important public issues. Not surprisingly, almost all laws and regulations enacted by the United States Congress, and by state legislatures and governmental agencies, are at least partly the result of lobbying by individuals or groups who are interested in the laws' enactment, amendment, or defeat.

Moreover, public opinion often affects the way our government agencies carry out and interpret existing laws and regulations. If you read the newspaper or watch the television news, you'll notice many examples of how public opinion affects our government in Utah. For example, public opinion has played a big role in the debates about whether we should hold the Olympics in Utah, whether we should build an "interconnect" to link up certain Wasatch Front ski resorts, and about many other issues such as sex education, drug testing, AIDS testing, availability of alcoholic beverages, and the rates that utilities can charge their customers.

Citizens can directly influence the way their tax dollars are spent. For example, citizens often speak out at public meetings held by city and county officials, school districts and boards, zoning and planning commissions, and the like. Those citizens can greatly influence the government's decisions on a variety of issues, such as where a park, jail, or hazardous waste incinerator

should be located, which books should be taught in our public schools, and whether the government should allow commercial or residential development in certain neighborhoods.

Lobbying is a specialized form of citizen involvement in the lawmaking process. A lobbyist is a person who contacts members of the lawmaking body and tries to influence the making of law. A good lobbyist is knowledgeable in his or her field, has a command of parliamentary procedure and legislative or agency rules, and becomes acquainted personally with as many lawmakers as possible. Examples of current heavily-lobbied issues include educational funding, insurance, tort and medical malpractice reform, and taxation.

Most lobbyists are official representatives of organizations such as labor unions, community or business groups, consumer groups, service organizations, and the like. Many lobbyists are paid for their efforts, but some lobbyists receive no pay. Among the paid lobbyists at the Utah State Legislature are lobbyists who represent the Utah Education Association and labor unions. Unpaid lobbyists include representatives of the Utah Symphony and the arts generally. In Utah, paid lobbyists must register with the Lieutenant Governor, pay a small fee, and make certain disclosures about their employers and the interests they represent.

Lobbyists perform a valuable function by providing legislators with information about how pending legislation will affect various segments of society. Lobbyists offer expert advice and information which the legislators might otherwise not get. For this reason, legislators rely heavily on lobbyists to supplement the information provided by legislative research staffs and committee reports. Sometimes, however, lobbyists from powerful organizations may exert too much power. A lawmaker might pay too much attention to organizations with highly-paid lobbyists and might not consider the interests of those groups that cannot afford to hire influential lobbyists.

Although elected officials and administrative agencies often take public opinion into account when they make their decisions, the judicial system (the courts) should not be swayed by public opinion. The court's job is to interpret the laws that have been enacted by the legislative body. The court bases its interpretation on the actual language of the law, or -- if the language is unclear -- upon earlier cases in which other courts have interpreted similar laws. To insure fairness and objectivity, the court's decisions should be isolated from public or citizen pressures. Using a jury to decide the factual issues in a case does, of course, allow some citizen involvement in the judicial system. The jury does not, however, decide the actual questions of the law. The judge -- and not the jury -- decides all of the legal issues in a case.

In summary, each of us has a right to participate in the making of our laws. We also have a right to try to influence the interpretation and implementation of our laws. By exercising these rights and making our views known on a wide variety of issues, we can protect our individual interests.

B. The Role of Elected Representatives in Making Laws

Our elected representatives are charged with the responsibility to study any proposed laws carefully and determine their overall fairness. The laws enacted by the state legislature are called **statutes.** Laws enacted by city and county governments are called **ordinances.** Laws created by administrative agencies are called **regulations or rules.**

The Utah State Legislature meets for forty-five days each year to enact state statutes. The state legislature also determines the scope of the law-making authority given to local governments such as cities and counties.

In Utah, county commissions and city commissions or councils are elected by local citizens and are responsible for enacting and administering local laws. Such local laws include zoning regulations, building codes, laws concerning minor offenses such as traffic violations, and other matters of local concern.

C. How Administrative Agencies Make Laws

Elected representatives frequently enact laws which create administrative agencies that are staffed by appointed (that is, not elected) officials who carry out technical and detailed areas of the law. For example, a zoning commission is an administrative agency supervised by the elected representatives in a city or a county. The zoning commission determines where and how homes and businesses can be built in that city or county. The Utah Public Service Commission is a state administrative agency that determines what rates a utility may charge for gas and electricity. The Utah State Road Commission is a state administrative agency that decides where stop signs and stop lights will be placed on state-controlled roads and what the speed limits will be on those roads. The Industrial Commission of Utah is another state administrative agency that establishes and administers safety and health rules for the work places in our state.

The legislature enacts statutes that outline the responsibilities and authority of each administrative agency. Within that outline, however, many administrative agencies have broad power to pass various rules and regulations about how the agency will carry out its responsibilities, about how the agency will judge those who break the agency's rules and regulations, and about how the agency will punish those who break those rules and regulations. Although an administrative agency has the right to

establish its own rules, the legislature has the power to change the agency's rules, and in some cases, a court can review and overturn the judgment of an administrative agency.

Although the Street Law book deals principally with the laws enacted by elected officials and interpreted by the courts, you should keep in mind that it is administrative agencies -- and not our elected officials or the courts -- that pass most of the legal rules in our country.

D. State and Federal Constitutions

A constitution is broader than a statute. A constitution establishes a government's basic structures and procedures, such as who can vote, how the legislature or congress will function, which powers the president or the governor have, and which disputes the courts can resolve. Our state and federal constitutions also identify certain basic individual rights such as the freedoms of speech, press, and religion.

In Utah, our state constitution may be amended only by a vote of two-thirds of both the Utah House of Representatives and the Utah Senate, and by a majority vote of the people.

1. The Supremacy of the United States Constitution

Every statute, ordinance, and regulation in Utah must comply with both the United States Constitution and the Utah Constitution. When state judges decide a case, they must consider not only the state laws and the state constitution, but the United States Constitution as well. Furthermore, even Utah's state constitution must comply with the United States Constitution. For that matter, all laws passed by the Utah State Legislature must give way to any conflicting federal statutes that are "constitutional," or consistent with the United States Constitution.[1]

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[1]Article VI of the United States Constitution establishes the supremacy of the United States Constitution. Article VI reads:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Utah's Constitution also recognizes the supremacy of the United States Constitution. Article I, Section 3 of the Utah Constitution says that: "The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land."

In short, the United States Constitution is the supreme law of the United States. This means that if the United States Congress or the Utah Legislature enact a law that conflicts with the provisions of the United States Constitution, the courts may declare the law invalid. The courts' exercise of such "judicial review" is a necessary part of any constitutional system; without it, Congress would be free to pass laws that fail to conform to the guarantees and protections of the United States Constitution.[2]

If the state court and the United States Supreme Court disagree about how to interpret the United States Constitution, the interpretation of the United States Supreme Court must prevail.[3]

Some people have had a difficult time accepting the idea of the supremacy of the United States Constitution and of the United States Supreme Court's interpretation of the Constitution. Former Chief Justice Ellett of the Utah Supreme Court once expressed the jealousy of those who believe in a broader concept of states' rights as follows:

> The United States Supreme Court, as at present constituted . . . has followed the urging of social reformers in foisting upon this Nation laws which even Congress could not constitutionally pass . . . As a result of the recent holdings of that Court, the sovereignty of the states is practically abolished, and the erstwhile free and independent states are now in effect and purpose merely closely supervised units in the federal system.

Dyett v. Turner, 20 Utah 2d 403, 439 P.2d 266, 267 (1968).

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[2]In a famous 1803 decision, Chief Justice Marshall explained the "supremacy" issue like this: It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act. Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. Marbury v. Madison, 1 Cranch 137 (1803).

[3]For example, in 1974 the Utah Supreme Court upheld the constitutionality of a Utah statute that stated that a female was no longer a minor once she turned eighteen, but a male was a minor until he reached the age of twenty-one. Stanton v. Stanton, 517 P. 2d 1010 (Utah 1974). The United States Supreme Court reversed the Utah Supreme Court and ruled that when the Utah Legislature established a different age of majority for males and females, it violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Stanton v. Stanton, 421 U.S. 7 (1975).

Whose approach do you think is best -- Chief Justice Marshall's or Chief Justice Ellett's?

2. The Role of the State Constitution and State Statutes

Although the United States Constitution is the supreme law of the land, the states have substantial powers. The Tenth Amendment to the United States Constitution reads:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Under these "**reserved powers**," the states are free to make and amend their own constitutions, so long as the constitutional provisions do not conflict with the United States Constitution.

The states are also free to broaden the guarantees provided to their citizens under the United States Constitution. For example, even though the due process clauses of both the United States Constitution and the New York Constitution are almost identical,[4] the highest state court in New York and the United States Supreme Court have interpreted these provisions quite differently in similar fact situations. The United States Supreme Court has held that under the Due Process Clause of the United States Constitution, the government may constitutionally prohibit contact visits of pretrial detainees in jails. Bell v. Wolfish, 441 U.S. 520 (1979). Under the almost identical Due Process Clause of the New York constitution, the Court of Appeals of New York (the highest court of New York) has held that contact visits for pretrial detainees may not be prohibited. The New York court discussed the relationship between the similar provisions of the United States and New York constitutions as follows:

> We have not hesitated when we concluded that the Federal Constitution interpreted by the Supreme Court fell short of adequate protection for our citizens to rely upon the principle that that document (i.e., the federal constitution) defines the minimum level of individual rights and leaves the States free to provide greater rights for its citizens through its Constitution, statutes or rule-making authority.

Cooper v. Morin, 424 N.Y.S.2d 168 (1979).

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[4]Article I, Section 6 of the New York Constitution reads: No person shall be deprived of life, liberty or property without due process of law.

The Fourteenth Amendment to the United States Constitution states: [N]or shall any State deprive any person of life, liberty or property, without due process of law.

In other words, although the states may not alter federal constitutional law, they are free to provide more protection for their citizens than provided by the United States Constitution. The greatest importance of state constitutions and state legislation lies in the greater protection offered by them as compared to the protections of the United States Constitution and federal legislation.

E. How Judges and Courts Make Law

Judges and courts make laws in two important ways. First, if a dispute arises about the meaning of a constitution, statute, ordinance, or regulation, the parties involved in the dispute may go to court to find out the meaning of the law.

For instance, both the United States Constitution and the Utah Constitution provide that no one can be compelled to be a witness against himself in a criminal case, or to give evidence against himself. What does this mean? Suppose a prosecutor wants a suspect to provide a hair sample, a urine sample, a blood sample, or a fingerprint sample. May the suspect refuse on the grounds that the law does not require suspects to give evidence or testify against themselves? Suppose the prosecutor wants the suspect to dress up in clothes similar to those worn by a person who committed the crime. May the suspect refuse for the same reason? Suppose the suspect gave evidence or testified against himself simply because the suspect did not know about the constitutional right to remain silent. May the suspect prevent the prosecution from using that evidence because the government failed to warn the suspect about the constitutional right to remain silent?

None of these questions is expressly answered by our state or federal constitutions. For example, the Fifth Amendment to the United States Constitution simply says: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." Similarly, Article I, Section 12 of the Utah Constitution states: "The accused shall not be compelled to give evidence against himself . . . ." It is up to the courts to determine the exact meaning and scope of these constitutional provisions. (The courts make these determinations during a trial and any appeals from the trial court's decision.) Once a court has interpreted a statute or a constitution, the court's interpretation is as much a part of the law as the words in the statute or constitution.

In addition to making law by deciding disputes about how to interpret a statute or constitution, the courts also make law by deciding disputes even where no statutes, ordinances, or regulations are involved. For instance, if Appleby and Burns are involved in an automobile accident, a traffic statute may determine who gets the ticket. But many states have no statute about who must pay to fix the automobiles that were damaged in an accident. Therefore, in those states, if Appleby and Burn's case ended up in

court, the court would apply a traditional (non-statutory) rule of law to determine which party should pay. Probably, the court will apply the "negligence" rule, a rule which says that when a driver fails to use reasonable care and causes an automobile accident, that driver must pay the other party for the damages caused by the accident.

This legal rule of negligence is part of a body of judge-made or court-made law known as **"common law."** That is, over the years the courts have decided many cases involving accidents. A common thread through these cases is the judge's decision that a person who causes an accident through carelessness is "negligent" and therefore liable to pay for the victim's damages. This consistent thread of reasoning is the common law. The common law is often (but not always) published in law books, and it reflects the total wisdom of many judges' decisions.

Years ago, before the legislature had enacted so many statutes, many of the laws governing our conduct were established by the common law. Even today, some of the most important laws in the areas of negligence, fraud, slander and libel, liability for dangerously defective consumer products (perhaps including the stereo discussed earlier), and many others are still judge-made or common law. However, if the legislature does not approve of the common law, it can enact a statute which changes the common law. Or, the legislature can **"codify"** the common law by creating statutes that embody the judge-made law.

Most of the rules of the common law have been developed by the courts over decades and centuries through the system known as judicial precedent. Under a system of judicial precedent, a court will try to make each decision consistent with decisions in earlier cases. Suppose, for example, that Appleby sold Burns a book for one dollar. Suppose Burns then opened the book, only to discover that there were no words on the pages. If Burns sued Appleby to recover her one dollar, would she win the case?

If this were the first case of its kind ever to arise, the court would have to reason from the facts to find the fairest solution. Perhaps the court would reason that Appleby should have told Burns about the defect in the book, and therefore, Appleby should return Burns' dollar. On the other hand, the court might reason that Burns should have inspected the book before buying it, which she could easily have done, and that because she failed to inspect the book, she is now stuck with it. If the court decides against Burns, the court's decision, along with the decisions of hundreds of other courts, might be published in a law book. When a similar case arises later, the judge would read about the Burns v. Appleby case and consider it in deciding that new case, because it is fair to decide similar cases similarly so that people can predict the consequences of their actions. By deciding the new

case in a way that is consistent with an earlier case, the judge is following "judicial precedent."

Suppose, however, that the new case is somewhat different from the old one because the defective book being sold for one dollar is wrapped in the original cellophane wrapping and cannot be inspected by the buyer. In this new case, the judge might decide that the old precedent does not apply, because unlike Burns, the buyer could not have inspected the book to learn that the pages were blank. The judge might rule, therefore, that the seller who failed to disclose that the pages were blank should now be required to refund the dollar. The judge's decision in this new case will itself become a precedent for future cases involving similar facts.

Suppose that even a third case arises in which the defective book is wrapped in cellophane, but the bookseller sells the book for only twenty-five cents. In looking for guidance, the judge will have two precedents to choose from, one in which the seller won and one in which the buyer won. Perhaps the third judge will decide that since the new case is identical to the second case except that the price of the book was only twenty-five cents, the new case should be decided the same way as the second case. On the other hand, perhaps the judge will reason that, because the price was so small, the buyer should have been put on guard that the book might be defective and that the buyer should have at least inquired about whether the book was defective. The judge may conclude that because the buyer made no such inquiry, the buyer cannot recover the purchase price. By this reasoning, the third judge will establish a third judicial precedent.

As each succeeding case arises, the judge will look at the earlier cases or precedents. If an earlier case is identical to the case currently before the judge, the judge's decision may be easy. If the facts of the new case are a little different from all of the precedents, however, the judge must pick and choose among the earlier decisions to find the most helpful legal reasoning and the fairest outcome. By this process, the system of common law develops.

The common law system of precedents allows for growth, flexibility, and consistency. Rules tied together by a thread of precedent help us to predict how the courts will apply the law, and yet these rules are flexible enough to allow innovations when new fact situations arise. To insure even greater consistency, a lower court is expected to follow the legal precedents established by the higher courts. Otherwise, the higher court will reverse the lower court's decisions when those decisions are appealed to the higher court. If a judge does not want to follow the higher court's precedent, the judge must either explain how the new case is different in some important respect or the judge must show why the law should be changed.

F. Conclusion

We have seen that our laws are made by citizens and their elected representatives, by administrative agencies, and by the courts. The purpose of enacting laws is to achieve fairness in people's dealings. One might ask, therefore, whether it's a good idea to have our laws made by such a variety. The answer is not simple and may be tied to tradition, among other things. It may safely be said, however, that each of these lawmakers brings a particular sort of fairness to the legal system.

For example, the involvement of the people and their elected representatives insures that the legal system incorporates certain community standards of fairness. The involvement of our administrative agencies guarantees a different sort of fairness, the fairness which flows from the careful consideration of technical and complicated cases. Finally, the court system provides a measure of continuity which is not found among elected representatives, and the courts strive to take a more dispassionate and reasoned approach to the law, an approach that is protected from the influence of pressure groups, lobbyists, and elected politics.

Ideally, by relying on this combination of lawmakers -- citizens, elected representatives, administrative agencies, and courts -- society will achieve a balanced approach to the law and will ensure fairness for all of us.

IV. TYPES OF LAW: CRIMINAL LAWS AND CIVIL LAWS

Laws can be divided into two main types: criminal laws and civil laws. Each of these laws will be discussed below.

A. Criminal Laws

Criminal laws are those which prohibit conduct that is offensive to society as a whole. In a criminal case, the people pay their government officials to investigate the crime, and they pay a government attorney, called the "prosecuting attorney," to bring the criminal to trial and seek to have the criminal fined or placed behind bars or otherwise punished. A person who commits a crime commits an act against the people, and the people, through their law enforcement system, see that the criminal is brought to justice. Therefore, the title of a typical criminal legal case in Utah would read: "State of Utah v. Appleby." (Appleby is the defendant.) Chapter Two describes the criminal law in more detail.

B. Civil Laws

Not all legal problems involve crimes. Sometimes a person simply refuses to honor a contract with someone else, or a person

may negligently injure someone. These cases do not involve any violations of the criminal statutes, and the state will not prosecute the erring party under the criminal system. The injured party may, however, sue the offending party in court and may claim that the person violated some rule of civil laws.

If an injured party can prove that the claim is valid, the judge or jury may order the losing party to pay the injured party money to compensate the injured party for the injuries. These types of cases are called civil cases. The title of a typical civil case would read: "Appleby v. Burns." (Appleby is the plaintiff or person who was injured; Burns is the defendant, the person who is alleged to have violated some rule of civil law.) In civil cases, the state is not directly involved, as it is in a criminal case.

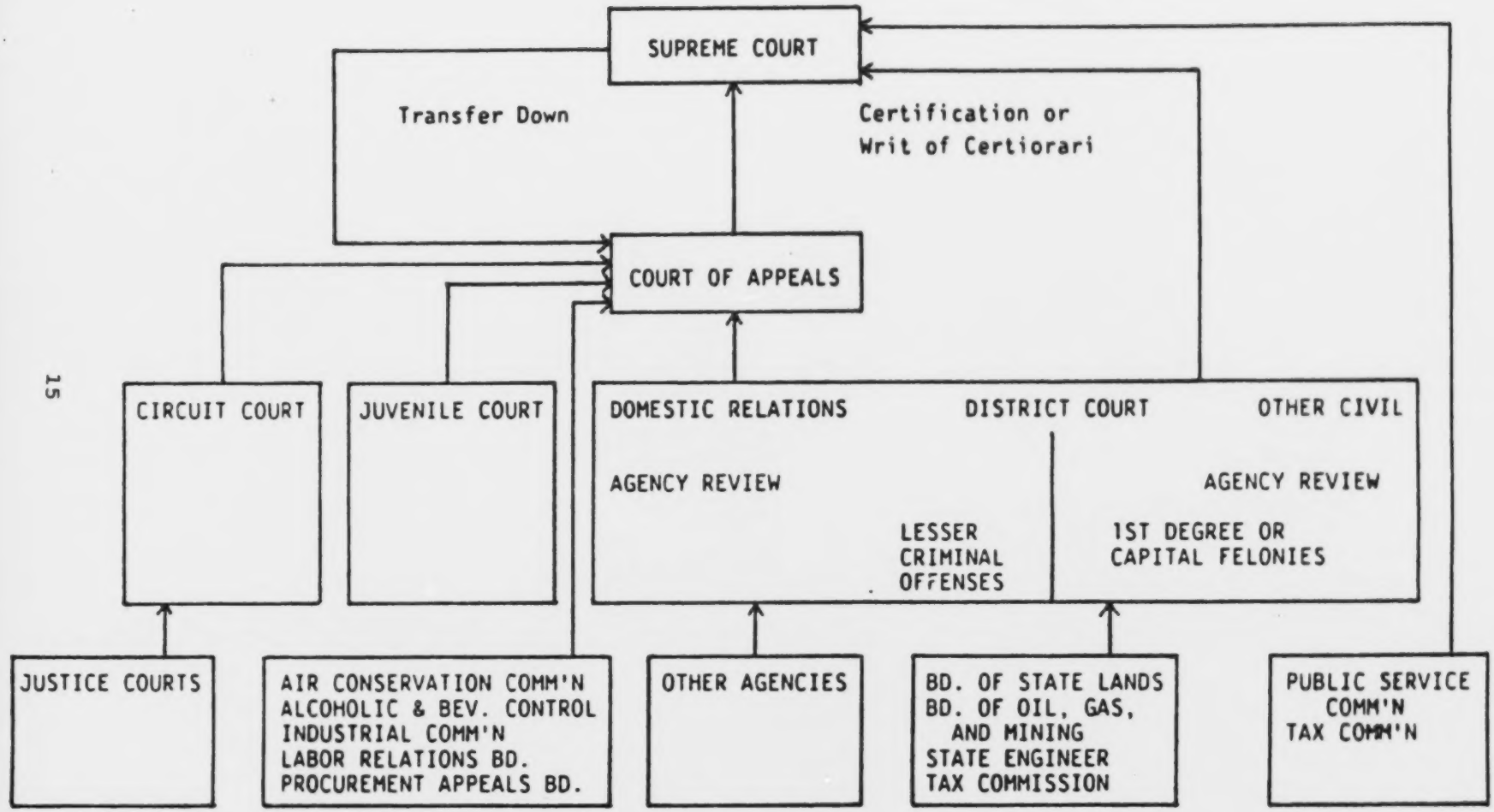
C. The Difference Between Criminal Laws and Civil Laws

The legislature determines the difference between civil laws and criminal laws. An example will illustrate this difference. Suppose Appleby is driving 70 miles an hour on the freeway and runs into Burns, who is driving properly. Suppose further, that Burns is killed as a result of the accident. Appleby has committed the minor crime of speeding, and the state may impose a minor fine as a result. But it is probably not a crime for Appleby to have caused Burns' death in these circumstances, because Appleby's negligence did not violate any criminal statutes. However, Burns' family may bring a civil lawsuit and sue Appleby for negligence and wrongful death under civil law. If Burns' family proves that Appleby was negligent, the court may order Appleby to pay the family money to help compensate them for Burns' death.

Suppose, again, that Appleby is both drunk and speeding when he collides with Burns and causes her death. The state legislature has said that drunk driving is particularly bad, and that the causing of someone's death as a result of such conduct is a crime. As a result, Appleby will now be prosecuted by the state for the crime of automobile homicide. Burns' family may also sue Appleby under the civil law and recover damages for Burns' death.

Because automobile homicide is a more serious crime than speeding, Appleby will have greater protections or rights if he is prosecuted for automobile homicide. For example, Appleby will have a right not to testify against himself, and the prosecution will have the burden of proving Appleby guilty beyond a reasonable doubt. In a civil case, however, Appleby's rights are less. For example, if Burns' family sued Appleby in a civil case, the family would not have to prove Appleby's negligence beyond a reasonable doubt. Instead, the family would only have to prove their case by a simple **"preponderance of the evidence"** (more than fifty percent).

Diagram of Courts



Problem No. 2

Appleby buys a stereo from Burns but pays for it with a bad check, written on an account which Appleby knew had been closed for over a year. Should Appleby's conduct be classified as a crime? Should Burns be able to sue Appleby under civil law and recover the amount of the bad check?

V. THE COURT SYSTEM

A. Trial Courts and Appellate Courts

In both criminal and civil cases, the people involved present their sides of the matter at a trial held in a trial court. The facts of the case will be decided in the trial court after all of the witnesses have testified and after the parties have presented all of their evidence. Sometimes the facts are decided by a jury, and sometimes the facts are decided by a judge. In a civil case, either party may request a jury; in a criminal case, the defendant (the accused person) may request a jury. If no one has requested a jury trial, the judge alone will decide the questions of fact. The judge always decides the legal questions (questions of law) involved in any trial.

Suppose the jury hears Appleby testify that he was not drunk and speeding at the time of the accident, but the jury then hears Officer Gonzales testify that skid marks at the scene of the accident show that Appleby was speeding. Officer Gonzales also testifies that he smelled liquor on Appleby's breath, but he could not give Appleby a blood test because Appleby was injured in the accident. In a jury trial, the judge will listen to this evidence and decide what the legal rule is, and the judge will explain these rules to the jury. The jury will then apply the law to the facts to decide whether Appleby is guilty of a crime (if it is a criminal trial) or whether Appleby is liable to pay damages to Burns' family (if it is a civil trial).

The judge's instructions about the legal rule are important. For example, in a criminal trial, the judge may tell the jury that no crime has been committed unless Appleby was drunk. That is, the jury must find Appleby innocent unless it is convinced beyond a reasonable doubt that Appleby was, in fact, drunk. In a civil trial, the judge might instruct the jury that under the appropriate civil law, Appleby must pay damages if he was drunk or if he was speeding. If the jury is convinced that Appleby was probably (more likely than not) either drunk or speeding, the jury must order Appleby to pay damages.

If Appleby loses in court, he can appeal the decision to an "appeals" court, often called an appellate court. In Utah, we have two appellate courts: the Utah Court of Appeals (an intermediate

appellate court) and the Utah Supreme Court (the highest state court). On appeal, Appleby's lawyer might argue that the judge made a mistake in telling the jury what the law was, or that the judge was wrong in making other legal decisions, such as deciding what evidence to allow the jury to hear. The appellate court does not hear any witnesses or receive any new evidence. The appellate judges will simply listen to the lawyers' arguments, review the written record of the trial, and decide if the law was correctly applied at trial. Once it reaches a decision, the appellate court will publish its decision and the reasons for it, so attorneys and judges can use the decision as precedent in future cases.

A person who loses at trial cannot appeal every issue to a higher court. As a general rule, the appellate courts hear only those disputes that involve questions of law. Except in rare cases, the appellate courts do not try to second-guess the trial court's decisions on questions of fact. This is because the appellate court is not as well-equipped as the trial court judge (or the jury) to decide factual issues. The trial judge or the jury actually heard the witnesses and observed their demeanor, and they had an opportunity to tell who was the most believable witness.

The appellate court, which sees only a written transcript of the trial, is not in a good position to evaluate the credibility of the witnesses. Therefore, the appellate court usually accepts the facts as determined in the trial court. For this reason, a defendant like Appleby would probably not be successful in bringing an appeal on a factual issue such as whether the jury was wrong in deciding that he was drunk.

B. The Utah Court System

Each state has courts that hear civil and criminal cases based on state laws. There are also federal courts in each state; these federal courts hear civil and criminal cases based on federal laws. In Utah, a number of different courts hear different types of cases. A diagram of the Utah court system appears on page 15. This section describes the different courts in Utah's court system.

In Utah's state court system, the **circuit courts** handle criminal cases that involve misdemeanors (that is, less serious crimes), civil claims of up to $20,000, and cases dealing with county or municipal ordinances. The circuit courts also serve as appeals courts for the **justice courts** (sometimes called "justice of the peace courts").

A department of the circuit court known as **"small claims court"** handles civil disputes involving $2,000 or less. The rules for filing a claim in small claims court are somewhat informal, because they're designed to help people resolve their legal disputes without having to hire a lawyer to represent them. The

small claims court also hears appeals from the decisions made by justices of the peace.

In some areas of Utah, **justices of the peace** hear minor criminal cases, minor legal disputes, and cases that involve violations of municipal ordinances. Like the small claims courts, the justice courts may hear small claims involving disputes of $5,000 or less.

Utah's **district courts** are courts of general jurisdiction, and they serve as both trial courts and also as appellate courts. Utah's state district courts have the jurisdiction to conduct trials in any civil cases and in criminal cases that deal with felonies (serious crimes). The district courts are also authorized to hear appeals from cases in the circuit courts, justice courts, and certain administrative agencies.

The **Court of Appeals** is Utah's intermediate appellate court. The Court of Appeals hears appeals from circuit courts, juvenile courts, and certain administrative agencies. The Court of Appeals also hears appeals from the district courts on domestic relations cases, lesser criminal cases, and cases involving disputes with administrative agencies, where the first appeal was to the district court. Finally, the Court of Appeals occasionally hears appeals that the Utah Supreme Court has transferred to it.

The **Utah Supreme Court** is the highest appellate court in Utah. The Supreme Court decides appeals from the Court of Appeals and certain administrative agencies. It also hears appeals from civil cases in the district courts and appeals from the district courts that involve more serious crimes. Sometimes a decision of the Utah Supreme Court may be appealed to the United States Supreme Court or to a federal district court.

VI. THE ROLE OF THE LAWYER

The lawyer plays an indispensable part in the American legal system, so much so that every lawyer is considered to be an officer of the court itself. Three roles of the American lawyer stand out as particularly significant; (1) the lawyer's role as an **advocate** for clients involved in civil lawsuits; (2) the lawyer's role as the **defender** of a client accused of committing a crime; and (3) the lawyer's role as **legal counselor** for clients who want to avoid lawsuits and criminal charges. Each of these roles is discussed below.

A. The Lawyer As an Advocate in the Adversary Court System

Suppose a judge asked you to write an essay listing all of the reasons why a father should not have to pay for the damages caused when the father's seventeen-year-old son crashed the family

car into a parked Rolls Royce. You might do a half-hearted job on the essay if you disagreed with the position the judge asked you to defend or simply because you did not think the assignment was very important. But suppose the judge asked the father to write the essay -- would the father be more likely to work hard on his essay and make it as persuasive as possible? If the judge had the benefit of an essay from the father who really did not want to pay and an essay from the owner of the Rolls Royce who really wanted the father to pay, it stands to reason that the judge would consider the best argument on both sides of the question. As a result, the judge could review all the best arguments and make a better-reasoned decision.

When a legal controversy arises, the judge sits in the middle and lets both sides make their best arguments. Naturally, the arguments presented to the judge will often mention earlier, similar cases or precedents, which might help the judge make a decision. If one side overlooks a strong legal argument, the judge might help out, but the judge cannot be expected to think of all of the best arguments without the parties' help. The judge's job is to listen and choose between the arguments presented by both sides. This is known as the "**adversary system**": each party puts its best foot forward and the judge decides which side has the law in its favor.

Under the adversary system, it is usually up to the parties in the lawsuit to not only present their best arguments, but to protect their own legal rights. For example, the law says that a witness is generally not allowed to present "**hearsay**" testimony -- testimony about something the witness has heard from someone else, but which the witness does not know from personal observation. However, if a witness tries to give hearsay testimony, the judge will allow the witness to go on unless the opposing party objects to the hearsay.

It's clear, therefore, that the judge's or jury's ability to reach a just decision in a case depends largely upon whether the lawyers for the opposing parties do their jobs well. Unless the lawyers know how to present their clients' evidence and legal arguments effectively, and unless the lawyers are familiar with all the important facts and legal rules involved in their clients' case, the court system will not work well. That's why a good lawyer can make a big difference in whether a client is successful in a lawsuit. Similarly, if you went to court without a lawyer and overlooked an important fact or legal factual argument in your favor, you might lose the case.

B. <u>The Lawyer As a Defender of the Accused</u>

In America, a person accused of a crime is "**presumed innocent until proven guilty.**" In other words, even if you are arrested and charged with a crime, the law assumes that you are completely

innocent unless the authorities can prove at trial that you actually committed the crime. This "presumption of innocence" is one of our most important constitutional rights, because as a society, we want to make sure that law enforcement officials treat everyone equally and fairly. Part of a lawyer's role in the adversary system is to represent even the most unpopular criminal defendants and see that they receive a full and fair trial.

To protect their clients' presumption of innocence, lawyers must defend their clients to the best of their abilities. If there are honest legal arguments or objections to be made for the client, the lawyer must make them. It is only by zealously protecting their clients' rights that lawyers can help the adversary system operate properly to protect the unpopular as well as the popular defendant. Sometimes cases are covered so sensationally by the newspapers and television that the public assumes the accused is guilty before a trial is held. This is called trial by press. When you see a sensational news report about a controversial trial, you should ask yourself whether the media is actually reporting the case fairly.

C. The Lawyer As Legal Counselor

Relatively few legal problems end up in court. Most lawyers spend much of their time counseling their clients on legal questions so that the clients can avoid legal difficulties or resolve their disputes out of court.

For example, if two people decide to become partners in a lawn-mowing business, will the partnership own the law mower just because it is used in the business? If one partner dies, will the other partner have to dissolve the business and pay the dead partner's spouse half of the assets? If one partner carelessly drives the partnership's pick-up truck over a pedestrian, will the other partner be liable, too? If a customer claims that the partnership did a poor job of mowing the lawn, but the partnership disagrees, is there an easy way to settle the dispute? If a customer does not pay on time, what can the partnership do to collect the bill? How will the partnership and the partners be taxed? Would it be better for the partners to form a corporation instead of a partnership? If the spouse of one partner wants a divorce, will the spouse be entitled to receive part of the partnership's assets? These and many other legal questions are best (and most cheaply) resolved with the help of a lawyer before they become a problem.

Whenever you plan to take a step which may raise legal questions (such as signing a contract or forming a partnership) you should consider consulting a lawyer first to avoid expensive and unfortunate legal problems later.

D. Hiring and Firing a Lawyer

You should shop just as carefully for a lawyer as you would for any other important service. One of the best ways to find a good lawyer is to rely on recommendations from people you trust. Perhaps, however, you don't know anyone who has ever used a lawyer, or your friends do not like the lawyers they hired. How would you go about choosing the best lawyer for your case? You could base your decision on information you found in advertisements and reference books, or on a recommendation from the Utah State Bar Association's referral service.

As recently as twenty years ago, lawyers were not allowed to advertise their services, and consumers sometimes had a hard time finding a lawyer who handled cases like theirs. Now, traditional restraints on lawyer advertising have given way to less stringent rules, and the newspaper, the yellow pages, and other advertising methods often provide information about a lawyer's legal specialty and even what the lawyer charges for some routine services. You should keep in mind, however, that advertising rarely helps a customer to decide which lawyer is the best.

Martindale-Hubbell, a publication available at most public libraries, law libraries, and the Utah State Bar office, lists many of the lawyers in each state and gives a general judgment, based partially on the lawyer's years of experience, about the competence of those lawyers. Martindale-Hubbell also lists the lawyer's areas of legal expertise and their representative clients. Some of the information in Martindale-Hubbell (especially the biographical information, areas of expertise, and client information) is paid advertising by the lawyers themselves, but it may nevertheless help a client to select a good lawyer.

The Utah State Bar Association, which regulates the practice of law in Utah, also operates a referral service to help people find a lawyer. For a minimal fee, the Bar can put you in touch with an attorney who practices in the legal area you need. Keep in mind, however, that the Bar referral service makes no judgment about which lawyer is the best qualified or the most appropriate for your case.

Whatever procedure you use in choosing a lawyer, you will probably find that the legal fees and the quality of service vary from one lawyer to the next. Before you decide which lawyer to hire, you should inquire about the legal fees you will have to pay, and you should ask whether the lawyer has the time to handle your case properly. You would not want to hire a lawyer who was too busy to handle your problem in timely fashion. You want to feel as good about your lawyer as you feel about your doctor, and it's definitely worth the extra work to choose a lawyer who is best suited for your particular needs.

E. Paying a Lawyer

Lawyers usually charge clients in one of four different ways. They may charge a flat fee, a contingent fee, an hourly fee, or a retainer. Each of these fees is explained below.

For routine legal work (such as uncontested divorces, simple wills, and adoptions), many lawyers charge a **flat fee**, a fee set in advance. A client should compare prices for these services because they may vary widely from lawyer to lawyer.

Where a client wants to sue someone to recover money damages (such as a suit against a negligent driver who caused an automobile accident), many attorneys will charge the client a **contingent fee**. Under a "contingency fee" arrangement, the client pays only for the actual out-of-pocket expenses (such as court filing expenses, travel expenses, discovery costs) until the case is concluded. If the case is concluded successfully, the client pays the lawyer a percentage of the money won (usually one-third of the award, or if the case is appealed, more than one-third of the award). If the case is lost, the lawyer receives only the out-of-pocket expenses, and the client pays no further fees. The size and terms of contingent fees also vary from lawyer to lawyer. The contingent fee allows clients who otherwise could not afford a lawyer to go to court to protect their rights. In some cases, however, the contingent fee can result in an unusually large payment to the lawyer.

For typical legal problems such as contract drafting, legal counseling, defending a lawsuit, and so forth, many attorneys simply charge an **hourly fee** for the time they spend on the project. Such hourly fees may vary between $50 an hour and $250 an hour. The hourly fee may depend in part upon the prominence of the lawyer and the difficulty of the work. Typically, senior partners in a law firm charge much more for their time than do younger, less experienced associates in the same firm.

For on-going legal counsel, a lawyer and client may decide upon a **retainer** -- a fixed legal fee (usually paid monthly). In exchange for the retainer, the lawyer performs all of the usual and necessary legal work required by the client. Businesses often pay lawyers a retainer to oversee their legal problems.

Some employers also provide their employees with **legal insurance plans**. These plans work like medical insurance; the employer or the employee pay the insurance premiums, and the employee then has the right to consult an attorney when legal problems arise. Legal insurance plans may be investigated by contacting one's employer or the Utah State Bar Association.

F. The Lawyer-Client Relationship

Once a client hires a lawyer, the client may expect prompt, loyal, honest, and accurate service. Clients sometimes do not understand fully the work their lawyers are doing, and most lawyer-client disputes arise because of a lack of communication. Clients should feel free to ask their lawyers for reports and to ask questions as they arise. The lawyer should keep the client informed and explain what is being done on the client's case. The client should also ask the lawyer questions whenever the client does not understand what is happening, and the client should give the attorney instructions and directions when appropriate.

Because a lawyer is an officer of the court and a member of the court-supervised Bar Association, a client may direct any complaints about the lawyer to the Bar Association, which will investigate the complaints and try to work them out. Ultimately, the Utah Supreme Court has the authority to discipline all lawyers who practice in Utah and to resolve any difficulties not settled by the Bar Association. Like physicians, lawyers can be sued by their clients for malpractice.

In our increasingly complex society, it is to each citizen's advantage to understand the role that lawyers play and to understand how lawyers can help us with our legal questions and problems.

APPENDIX

CHAPTER ONE

INTRODUCTION TO UTAH STREET LAW

"Where You Live" Questions and Answers

p. 17 **What Legislatures exist in your state and local area? What are some examples of types of laws each of these legislatures have enacted?**

While there is only one body in the State of Utah actually called a "legislature" -- the Utah State Legislature -- all counties, cities and towns have legislative bodies.

The Utah State Legislature is comprised of the House of Representatives, having 75 members, and the Senate, having 29 members. Counties have County Commissioners, generally three in each county, who meet in a legislative capacity to pass county ordinances. Cities and towns have City or Town Councils which pass local ordinances for their jurisdictions.

Probably the most important legislative function of any legislative body is the imposing of taxes and preparing a budget determining how those tax revenues are going to be spent.

The types of laws enacted by the State Legislature deal mostly with the state as a whole, such as: public schools, higher education, highways, prisons, public safety, health, welfare, environment, agriculture, crime, economic development, natural resources and business regulation.

County, city and town legislative bodies deal with matters of a much more local nature, such as: maintaining law and order, sanitation, fire protection, constructing and maintaining streets, sidewalks, waterworks and sewers, abating of nuisances, and constructing and maintaining parks. Some municipalities in Utah also operate airports, golf courses, swimming pools, power plants, public transportation facilities and public utilities.

p. 21 **Where and how does one register to vote in your area? Is there a residency requirement? If so, for how long? What can people vote for in your area? When and where does one go to vote?**

To register to vote in Utah, you must prove that you have resided in Utah for at least thirty days before an election. You may register at the county clerk's office at any time

prior to thirty days before the election. During the thirty-day period immediately before an election, however, you must register with your voting district registrar on specific registration days. If you need more information about locating your voting district registrar, you should call the county clerk's office in your county, listed in the phone book under "Voter Registration" or "Registration and Election Commission" for your county. Local newspapers often publish lists of the dates and locations for voter registrations.

Once you've registered to vote, you can vote in your voting district. The election officials may ask you to show a valid drivers's license or Highway Department photo I.D. to prove your identity. If you move to a new voting district, you'll need to change your registration to that district. Your name is automatically removed from the voter registration rolls if you fail to vote in four consecutive general elections.

If you cannot go to the voting poll in person, you can vote by sending in an "absentee ballot." Absentee ballots are available through the county clerk's office. To obtain an absentee ballot, you need to go to the county clerk's office no less than fifteen days before the election and prove that you're a registered voter. The county clerk will give you an absentee ballot to mail in before the election, and your ballot will be counted with the other ballots. If you are living out of state, you may write to the county clerk's office and request a ballot. It, too, will be counted with all other ballots if it is postmarked before the election. The request for an absentee ballot must contain your full legal signature.

p. 23 **What special interest, pressure, or lobbying groups exist in your state? On behalf of what issues or causes do these groups lobby? What techniques do they use?**

In each state, many lobbying groups try to affect the outcome of various political issues. Some lobbying groups are long-standing, and some groups are organized to lobby only for special temporary causes. In Utah, long-standing lobbying organizations include the Utah Education Association (which represents Utah public school teachers), the Utah Taxpayers Association, the League of Women Voters, the Utah Manufacturers Association, and the Chamber of Commerce.

Special interest groups represent a wide variety of interests, ranging from the interests of large businesses or the interests of gifted children. Each organization listed above tries to inform the legislators about the organization's special needs and convince the legislators that the organization deserves special consideration in terms of government funding or legislation.

These groups also try to affect the community through the news media. By influencing public opinion, these groups often affect the laws that the Legislature enacts.

p. 24 **What are the major departments or agencies of your state government? How are they organized and what do they do?**

The State of Utah has many agencies that carry out the laws passed by the Utah State Legislature. For example, the Industrial Commission of Utah establishes and administers safety and health rules for work places in Utah. The State Office of Education is the state agency in charge of education, teacher certification, and curriculum in Utah.

If you would like a chart that outlines the main departments in Utah state government, you can call the Office of Legislative Research and General Counsel at 538-1032.

p. 35 **Are there any programs in your community that could be used by people who would like to find an alternative to the courts? What types of disputes do these programs handle? How successful are the alternative procedures?**

There are several mediation, arbitration, and other dispute-resolution programs in Utah. In a mediation program, the opponents ask a neutral third party to help solve a conflict without involving the court system. One not-for-profit mediation program is the Utah Dispute Resolution Community Mediation Service. This program mediates disputes between neighbors, friends and relatives, and disputes between landlords and tenants, or between consumers and merchants. Mediation is often preferable to a law suit because mediation is faster, less expensive, and more confidential.

In the arbitration process, the parties submit their dispute to an impartial party for a final and binding decision. Arbitration is less formal than a court trial, but the arbitrator's decision is legally binding and enforceable in all fifty states. (Other alternative dispute resolution methods are not usually legally binding. A mediator, for example, acts only as an advisor.) An example of an arbitration service is the American Arbitration Association ("AAA"). The AAA is a public-service, not-for-profit organization which specializes in resolving disputes that relate to business and insurance matters, and labor-management disagreements.

Mediation and arbitration programs are relatively new to Utah, so their success rate is still uncertain. Nationally, however, dispute resolution programs have an 80-85% success rate.

p. 43 **How are jurors selected by the courts in your community? How many are on the jury in a civil trial? In a criminal trial? Is a unanimous verdict required in a civil trial? In a criminal trial?**

In Utah, citizens are selected for jury duty by a computer using a random selection procedure. Everyone who is more than eighteen years old and is registered to vote or has a driver's license is considered in the selection process. Once a name has been selected, the court sends a questionnaire to the prospective juror. On the basis of this questionnaire, the court determines whether the person is eligible to serve.

If you are called for jury duty, you are required by law to answer the court's questionnaire truthfully. You must complete and return the form to the court clerk within ten days after you receive it, even if you think you're not eligible to serve as a juror. The court will decide if you are eligible. If you fail to complete and return a jury qualification form, or if you willfully misrepresent a material fact on the form, the judge may fine you up to $500 and sentence you to jail for up to 30 days.

To be eligible for jury duty, a person must meet the following qualifications: (1) live in the county for which service is requested; (2) be a citizen of the United States; (3) read, speak, and understand the English language; (4) never have been convicted of a felony; (5) have no physical or mental disabilities that would prevent jury service; (6) not be on active duty in the military; and (7) not have served on jury duty in the last two years.

A civil trial (that is, a trial in a non-criminal case) in district court requires eight jurors, and six of the eight jurors--or a three-fourths majority--must agree on the verdict. If the trial is expected to be lengthy, the judge will select an alternate juror to make sure that there are enough jurors even if one of the regular jurors cannot complete the trial due to personal illness or emergency.

A criminal trial can have either eight or twelve jurors. In a trial for a capital offense (that is, a crime for which the defendant could receive the death penalty), the court must select a jury of twelve members. In non-capital cases, the court has the option to select a jury of only eight members. Again, if the trial is expected to be lengthy, the judge may elect one or more alternate jurors.

All criminal cases must be decided by a unanimous verdict of the jury. That is, the jurors must unanimously agree that the defendant is either guilty or not guilty. If the jurors

cannot reach a unanimous verdict, the judge must select a new jury and the case would be retried.

p. 46 **How do people find lawyers in you area? Does the bar association have a lawyer referral service? Do lawyers advertise? Are there lawyers of legal organizations that will represent you for free if you cannot afford a lawyer or in certain types of cases?**

There are many ways to find a lawyer in Utah. One of the best ways is through Martindale-Hubbell, a reference publication available in most public libraries, law libraries, and the Utah State Bar office. Lawyers from every state are listed in this publication.

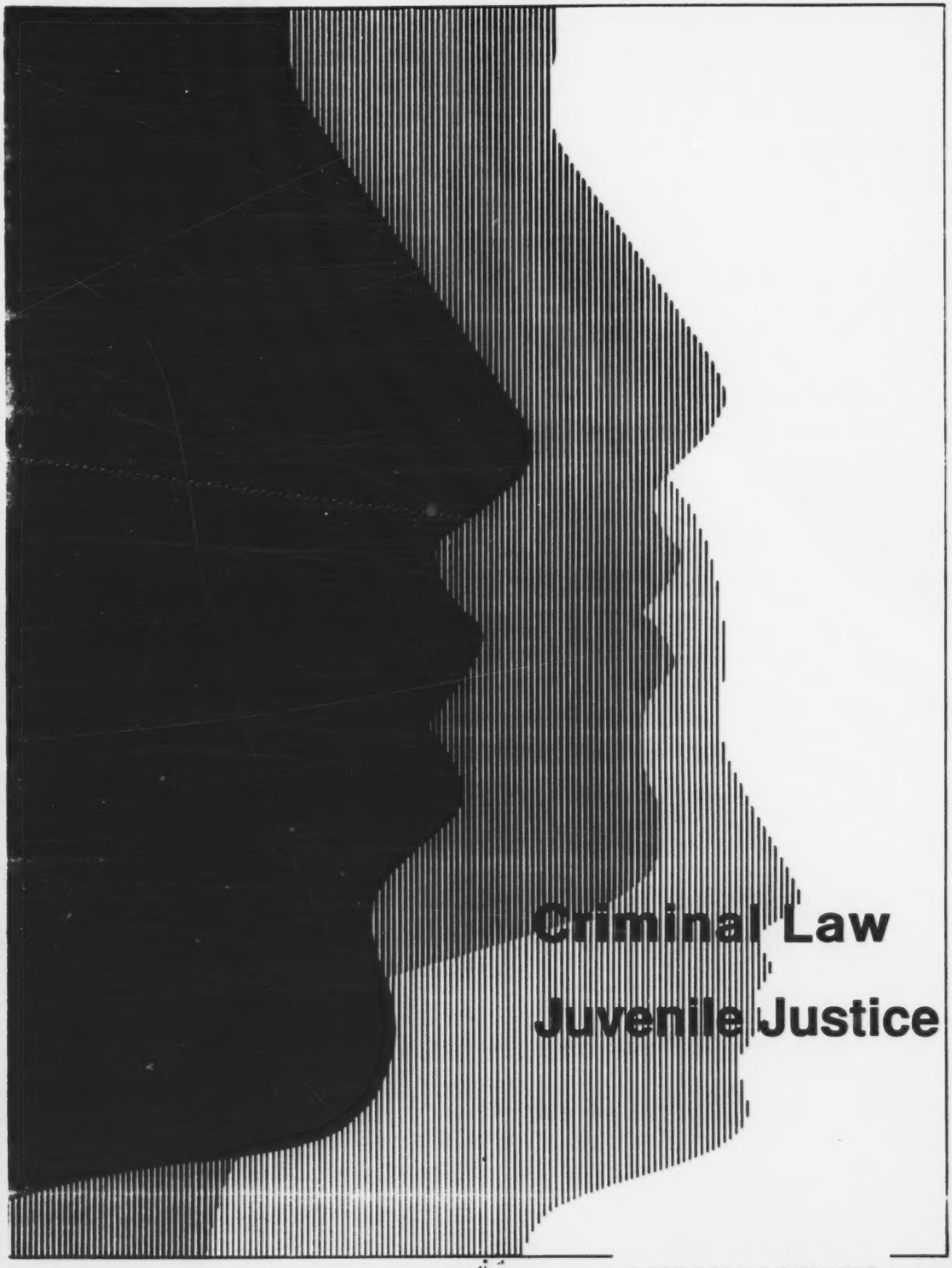
The Utah State Bar also provides a lawyer referral service. The Utah State Bar will give you the name of three attorneys who practice in the legal area you need and the attorneys will give a half hour consultation for $15.00.

Lawyers are now allowed to advertise. The newspaper, yellow pages, and other advertisements often describe lawyers legal specialties and may give you some idea how much the lawyer charges for certain routine services.

Even if you cannot afford a lawyer, legal services may still be available. The following legal organizations represent low-income clients free of charge when the clients cannot afford to pay:

** Utah Legal Services, Inc. (328-8891).
** Legal Aid Society (328-8849).
** American Civil Liberties Union (521-9289).

Utah Legal Services and the Legal Aid Society offer legal services of a general nature. The American Civil Liberties Union (ACLU) specializes in problems involving violations of civil liberties or illegal discrimination.



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CHAPTER TWO

CRIMINAL LAW AND JUVENILE JUSTICE

CRIMINAL LAW SECTION*

I. INTRODUCTION

A study of Criminal Law often leads to a discussion of the conflict between individual rights and the rights of society. The United States Constitution and the Bill of Rights provide individuals with protection against over-aggressive government activities. The most important protection in the criminal law is the right to **due process of law**.

In criminal law, due process means that a person charged with a crime is **presumed innocent**. No one shall be convicted of a crime until proof is made beyond a **reasonable doubt** to a jury of one's peers sitting before a judge. Due process also provides that a person is entitled to competent legal assistance, including a lawyer, even if a person can not afford one. Due process provides for appeal and review to ensure fairness in all proceedings, and the right to reasonable bail.

The public often views the legal system as favoring the accused and neglecting the rights of victims to be free from harm or violence or from the unlawful taking of property. Society has the right to be free from crime; individuals have the right to be free from unlawful intrusion or treatment. A study of criminal law is a study of this delicate balance.

II. GENERAL PROVISIONS

The Utah Criminal Code, which is found in Title 76 to the Utah Code, defines the criminal law in this state. All 50 states have similar codes, which cannot conflict with the United States Constitution, but which describe the law in the respective states.

It should come as no surprise that all 50 states outlaw murder, theft, and other criminal activity which creates harm to members of society. The way each state chooses to define its law or punish its criminals is a state-by-state decision subject only to the protections provided by the United States Constitution and the state's constitution.

Before a person can be charged with a crime in this state, Utah must have **jurisdiction**. Jurisdiction means that persons are

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*The Criminal Law section of this chapter was written by Gregory G. Skordas of the Salt Lake County Attorney's office and Charles F. Loyd, Jr., of Legal Defenders Association, with the 1993 update by Gregory G. Skordas.

subject to prosecution in Utah for an offense if their offense was committed in whole or in part in this state.

Venue provides that criminal trials will be held in the county or district where the offense was committed. A change of venue is sometimes given where pretrial publicity makes a fair trial impossible.

A statute of limitations is provided in the criminal law. Capital felonies, aggravated murder, murder, manslaughter, and certain crimes by government officials have no time limit. Most other felonies and the misdemeanor negligent homicide must be filed within four years of the crime. All other misdemeanors are allowed two years. The time period for the statute of limitations does not run while the defendant is out of the state. Sexual offenses against children have a statute of limitations of four years after the crime is reported to the police.

III. PRINCIPLES OF CRIMINAL RESPONSIBILITY

No person is guilty of an offense unless the offense was committed while the person had a "guilty mind." The state does not generally punish accidents or mistakes. Culpability requires that a person must act either intentionally, knowingly, recklessly, or with criminal negligence. Traffic offenses, which are generally misdemeanors, do not need to be accompanied by a guilty mind. It is enough to prove a person was speeding without having to prove intent.

Also, anyone who solicits, requests, commands, encourages, or intentionally aids another person to commit an offense shall be criminally liable for the offense. If a person hires another to commit a murder, both may be charged equally with homicide.

Sometimes, even people with guilty minds cannot be punished. Age is a defense. In Utah, a person cannot be criminally responsible for offenses occurring before the age of fourteen. Fourteen through seventeen-year-olds can be tried after a hearing certifying them as adults. This is discussed in the chapter on Juvenile Law. Other defenses are these:

A. Defenses

1. Compulsion

A person is not guilty of an offense when he engaged in criminal conduct because he was coerced to do so by the use or threat of physical force.

2. Entrapment

This occurs when the police or their agents induce someone to commit an offense by methods creating a substantial risk that the offense would be committed by someone not otherwise ready to violate the law.

3. Ignorance or Mistake

Ignorance or mistake of fact which disproves the culpable mental state is a defense. Example: Taking another person's property believing it to be one's own is not theft.

4. Mental Illness

It is a defense that the defendant, as a result of mental illness, lacked the mental state required to commit a crime. This includes insanity and diminished mental capacity.

B. Non Defenses

The following are not recognized as excusing criminal responsibility:

1. Mistake as to Age

It is not a defense to child kidnapping, rape of a child, or sexual abuse of a child, that the defendant believed the victim was 14 or older or was unaware of the victim's true age.

2. Intoxication

A person who is under the influence of voluntarily consumed or injected alcohol or drugs is not excused from criminal responsibility.

C. Justification

The criminal conduct of a person is justified under certain circumstances:

1. Self-Defense

A person is justified in using force against another if she reasonably believes force is necessary to defend herself or another against the other's unlawful use of force. However, the use of

deadly force is only permitted when used to prevent death or serious bodily injury.

2. Government Officer

Government officers or employees are justified to the extent that their conduct is reasonable in fulfillment of their duties. Example: A police officer does not commit a trespass when chasing a suspect across a yard even if "No Trespassing" signs and fences exist.

3. Parents

It is a defense for parents, guardians, and teachers to use reasonable discipline.

4. Prisoners

Reasonable discipline of persons in custody is justifiable.

5. Peace Officers

A police officer is justified in using force, but not deadly force, to arrest or to defend himself from another while making an arrest. Peace officers are justified in using deadly force in several instances:

a. When ordered by a Court to carry out a death penalty execution;

b. When preventing an escape or making an arrest when force is necessary and the suspect has committed a felony involving death or serious bodily injury, or the subject poses a threat of death or serious bodily injury to the officer or others, or to prevent death or serious bodily injury of the officer or others. If possible, a warning should be given prior to the use of force.

6. Force to Defend a Dwelling

A person is justified in using force to defend her dwelling to prevent or stop another's unlawful entry or attack; however, the use of deadly force can only be used when entry is made in a violent or dangerous manner or she reasonably believes entry is made to commit a felony.

7. Force to Defend Property

A person can use force but not deadly force against another when necessary to prevent the other from taking his property. Example: A person may not shoot someone who is stealing his car.

IV. PUNISHMENTS

Each year, the legislature focuses its attention on different problems associated with juvenile justice, including gang problems. New laws are passed to help the law enforcement community battle perceived new problems. For example, in response to the issue of more and more kids packing guns into and around our schools, the legislature has created new laws forbidding the use or even the presence of firearms near school property. Similarly, because of the increased number of drive-by shootings in the Salt Lake area, a law was passed which enhances the old **"Discharge of a firearm from a vehicle"** statute from a class "B" misdemeanor to a third degree felony when the firearm is discharged in the direction of a habitable structure, another person, or another vehicle. (See Section 76-10-508 of the Utah Code for the exact language.)

The legislation passed by the 1993 legislature is mostly appropriations for such programs as Drug Abuse Resistance Education (D.A.R.E.), the Officer Friendly program, the Task Force on Criminal Activity, and other programs emphasizing education on gang and drug violence.

A. Previous Legislative Gang, Drug, and Gun Enactments

1990 legislation added enhanced penalties for crimes committed by "three or more persons acting in concert" (a sort of statutory definition of criminal street gang).

Felonies	Examples	Punishment	With Firearm	With"Gang"
Capital	Aggravated-murder	Life or Death Penalty	No change	20 YEARS Minimum
1st Degree	Rape Murder Armed robbery Armed burglary Aggravated arson	5-life	Add 1-5 YRS. Consecutive Mandatory	9 YEARS Minimum Mandatory

2nd Degree	Auto theft Manslaughter Residential burglary **Distribution of drugs** Robbery Automobile homicide	1-15 years	Add 1-5 YRS Consecutive	6 YEARS Minimum
3rd Degree	Business burglary **Possession of drugs** Aggravated assault **Distribution of marijuana**	0-5 years	Add 0-5 YRS Consecutive Discretionary	3 YEARS Minimum Mandatory

Drug offenses:

a. Within 1000 feet of a school: All penalties are increased one degree. (Distribution of cocaine at or near a school is now a first degree felony.)

b. Special forfeiture laws for individuals knowingly possessing or distributing drugs. Property subject to forfeiture: Controlled substances, equipment used to manufacture, containers, equipment used to administer, anything used to transport including vehicles, all proceeds from the sale or distribution of controlled substances.

Use of a firearm:

a. Use of a firearm during the commission of an offense carries a mandatory 5 to 10 years consecutive firearm enhancement for any second offense involving a firearm.

b. Use of a firearm within 1000 feet of a school also increases the class of the offense committed by one degree.

Misdemeanors*	Examples	Punishment	With "Gang"
Class A	Assault on a peace officer Negligent homicide	1 year	180 days Minimum Mandatory
Class B	Assault DUI Shoplifting Marijuana possession	6 months	90 days Minimum Mandatory

*There is no firearm enhancement for misdemeanors.

B. Other legislation relating to specific gang-related activities:

1. Drive-By Shootings: Section 76-10-508 Utah Code

Makes discharge of a firearm from a vehicle a third degree felony (instead of a Class B misdemeanor) when the elements of a drive-by shooting are present. These factors include whether the shooting was in the direction of a residence, another vehicle, or was likely to cause danger to any person.

2. Graffiti Liability

Adds or amends seven provisions of the Utah Code including:

a. Criminal Mischief: Section 76-6-106 Utah Code Amends criminal mischief (vandalism) to include graffiti.
b. Criminal Trespass: Section 76-6-206 Utah Code Amends criminal trespass law to include graffiti and also:
   1) Adds community service as a condition of court-ordered probation.
   2) Adds community service as a condition of Juvenile adjudications.
   3) Creates civil liability on the part of a parent whose child is adjudicated under this section.
   4) Makes civil liability independent of criminal responsibility.
   5) Allows courts to order the offender, in addition to the penalties provided by law, to clean up the graffiti.

3. Possession of Firearms at or near a School

Possession of firearms at or near a school adds or amends four provisions of the Utah Code including:

a. Section 76-3-203 (Sentencing) Enhances penalties for crimes committed when a firearm is used within 1000 feet of a school (similar to the current "Drug Free Zones").
b. Section 76-10-505.5 Possession of a firearm at or near school property creates a new offense for possession of a firearm at or near a school.

c. Section 76-10-506 Threatening with or using a dangerous weapon in fight amends current threatening with or using a dangerous weapon violation to a Class A misdemeanor.

V. OFFENSES AGAINST THE PERSON

A. Assault and Related Offenses

Assault is an attempt, with unlawful force or violence, to do bodily injury to another, or a threat, accompanied by a show of immediate force or violence, to do bodily injury to another. Utah has no battery laws but instead groups assault and battery together under assault. Most fights are charged as assaults. Pointing a gun at someone is an assault.

Assault is a class B misdemeanor. A person who assaults a peace officer, knowing he is a peace officer, is guilty of a class A misdemeanor. A prisoner who commits assault is guilty of a third degree felony. If a deadly weapon is used or serious bodily injury is caused the assault becomes aggravated assault, a third degree felony.

Mayhem, a second degree felony, occurs when a person intentionally deprives another of a member of his body, or puts out an eye, etc.

Harassment, a class C misdemeanor, is a written threat.

Child Abuse is an assault on anyone 17 years of age or less. Any person who inflicts serious injury on a child or allows another to seriously injure a child under his care is guilty of a second degree felony; however, if the assault is reckless, the offense is a third degree felony, and, if criminally negligent, a class A misdemeanor. If the injury is not serious, the offenses are dropped several degrees to misdemeanors.

B. Homicide

The Utah Code classifies the mental state of the person commiting a crime as either intentionally, knowingly, recklessly, or criminal negligence. It defines "intentionally" as acting with a "conscious objective" to cause the result. "Knowingly" is defined as acting with an "awareness" that the conduct is illegal or will cause physical injury. "Recklessly" is used to define an act where the person is aware of and "consciously disregards a substantial and unjustifiable risk" that the illegal result will occur. An unjustifiable risk, as mentioned in recklessly and criminally negligent, refers to a gross deviation from the standard of care that a reasonable person would observe under the same circumstances.

Intentional murder is more serious than negligent murder. The following are the different types of criminal homicide as defined by Utah laws.

1. <u>Aggravated Murder</u>

Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances.

a The homicide was committed by a person who is confined in a jail or other correctional institution.

b. The homicide was committed and two or more persons are killed.

c. The defendant knowingly created a great risk of death to a person other than the victim and the defendant.

d. The homicide was committed while the defendant was engaged in or attempting to commit, or flight after committing aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, sexual abuse of a child, child abuse of a child under the age of 14 years, aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, kidnapping, or child kidnapping.

e. The homicide was committed for the purpose of avoiding or preventing an arrest of the defendant.

f. The homicide was committed for pecuniary or other personal gain.

g. The defendant committed, or engaged or employed another person to commit the homicide.

h. The actor was previously convicted of first or second degree murder or of a felony involving the use or threat of violence to a person.

i. The homicide was committed for the purpose of preventing a witness from testifying,

preventing a person from providing evidence or participating in any legal proceedings or official investigation, retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation, or disrupting or hindering any lawful governmental function or enforcement of laws.

j. The victim is or has been a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy.

k. The victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew or reasonably should have known that the victim holds or has held that official position.

l. The homicide was committed by means of a destructive device, bomb, explosive, infernal machine, or similar device which the actor planted, hid, or concealed in any place, area, dwelling, building, or structure, or mailed or delivered, or accused to be planted, hidden, concealed, or mailed or delivered and the actor knew or reasonably should have known that his act or acts would create a great risk of death to human life.

m. The homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force.

n. The homicide was committed by means of the administration of a poison.

o. The victim was a person held or otherwise detained as a shield, hostage, or for ransom.

p. The defendant was under a sentence of life imprisonment or a sentence of death at the time of the commission of the homicide.

q. The homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death.

Aggravated murder is a capital offense.

2. Murder

Criminal homicide constitutes murder if the defendant:

a. intentionally or knowingly causes the death of another; or

b. intending to cause serious bodily injury to another, he commits an act clearly dangerous to human life that causes the death of another; or

c. acting under the circumstances evidencing a depraved indifference to human life, he engages in conduct which creates a grave risk of death to another and thereby causes the death of another; or while in the commission, attempted commission, or immediate flight from the commission or attempted commission of aggravated robbery, robbery, rape, object rape, forcible sodomy, or aggravated sexual assault, aggravated arson, aggravated burglary, burglary, aggravated kidnapping, child kidnapping, rape of a child, object rape of a child, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, or child abuse.

Murder is a first degree felony.

It is not a defense to a homicide charge that the defendant killed a person other than his intended victim.

3. Manslaughter

Criminal homicide constitutes manslaughter if the defendant:

a. recklessly causes a death of another; or

b. causes the death of another under the influence of extreme emotional disturbance for which there is reasonable explanation or excuse; or

c. causes the death of another under circumstances where the defendant reasonably believes the circumstances provide a legal justification or excuse for his conduct although the conduct is not legally justifiable or excusable under the existing circumstances.

Manslaughter is a second degree felony.

4. Negligent Homicide

Criminal homicide constitutes negligent homicide if the actor, acting with criminal negligence, causes the death of another. Negligent homicide is a class A misdemeanor.

5. Automobile Homicide

Automobile homicide occurs when an intoxicated person drives an automobile negligently and causes the death of another. Automobile homicide is a third degree felony unless the driver was reckless as opposed to merely negligent, in which case it is a second degree felony.

6. Other Crimes Against the Person

Other personal crimes include kidnapping, a second degree felony, child kidnapping, a first degree felony, aggravated kidnapping, a first degree felony, and sexual offenses.

VI. OFFENSES AGAINST PROPERTY

A. Theft

Theft is the unauthorized control over the property of another with the intent to deprive the owner of the property. Theft includes shoplifting which is called retail theft, theft by deception, theft by extortion, theft of lost, mislaid or mistakenly delivered property, receiving stolen property, theft of services, and theft by a person having custody pursuant to a rental agreement.

Theft is a second degree felony if the value of the property or services exceeds $1,000.00, is a firearm, or is an operable motor vehicle. Theft is a third degree felony if the value of the property is between $250.00 and $1,000.00 or if the defendant has twice been convicted of theft. Theft is a class A misdemeanor if the value of the property stolen is between $100.00 and $250.00 and theft is a class B misdemeanor if the property is worth less than $100.

B. Arson

Arson is the intentional damage of property by fire or explosives. Arson is a second degree felony unless only minor damage is done; then it is a misdemeanor. Arson becomes Aggravated arson, a first degree felony, if a home or habitable structure is burned.

C. Vandalism or Destruction of Property

These crimes are contained in Utah Law under the heading of Criminal Mischief. This offense is similar to theft because the degree of the charge depends on the value of the property damage, the most extreme case constituting a third degree felony.

D. Burglary

Burglary is the entry of anyone into a building with the intent to commit a felony or theft or an assault on any person. Burglary is a third degree felony unless the building is a home or other dwelling. Burglary of a dwelling is a second degree felony. Aggravated burglary occurs when a weapon is used or someone is injured during a burglary. Aggravated burglary is a first degree felony. Burglary of a vehicle or car prowling is a class A misdemeanor.

E. Trespass

Trespass is like burglary but does not require entry into a building, only entry onto property. Trespass is usually a class C misdemeanor and generally requires either notice such as a "no trespassing" sign or the intent to commit a crime on the property.

F. Robbery

Robbery is the taking of property from a person or from his immediate presence against his will and is a second degree felony. A "mugging" is a robbery. Robbery is a first degree felony if a weapon is used.

G. Fraud

Crimes of fraud include forgery, tampering with records, using stolen credit cards, issuing bad checks, deceptive business practice, bribery, defrauding creditors, false insurance claims, and filing false credit reports. Fraud crimes are generally punished the same way theft crimes are--the more money taken means a more serious offense can be charged.

VII. OFFENSES AGAINST THE FAMILY

These offenses are divided into marital violations, and the nonsupport of children. Except for criminal nonsupport, these cases are quite rare.

A. Marital Violations

These crimes include bigamy, or plural marriage, which is a third degree felony, incest, which means sexual intercourse with an ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin. Incest is a third degree felony. Also included are adultery, a class A misdemeanor, which can only be committed by a married person, and fornication, a class B misdemeanor, committed by unmarried persons.

B. Nonsupport of children

Anyone who willfully fails to pay court-ordered child support is guilty of a class A misdemeanor. Any person who sells his child is guilty of a third degree felony.

VIII. OTHER OFFENSES

Other crimes are broken down into offenses against the Administration of Government, which include corruption, obstructing justice, interfering with a police officer, accepting a bribe, escape from custody, threatening a public official, filing false tax returns, perjury, giving false information to a police officer, evidence and witness tampering, impersonating a peace officer, and sabotage.

Offenses against public order and decency include disorderly conduct, giving a false alarm, telephone harassment, cruelty to animals, libel and slander, intoxication, lewdness, loitering, abuse of a corpse, prostitution, and supplying alcohol and tobacco to minors.

There are hundreds of other offenses in these categories covering just about every type of criminal conduct. Two of the categories of offenses of particular interest right now include traffic and drug and alcohol offenses.

IX. TRAFFIC OFFENSES

In 1987, the Utah State Legislature amended the entire traffic code making almost all traffic moving violations class B misdemeanors which means a judge may sentence someone convicted of speeding up to 6 months in jail and a fine of up to $1,000.00 plus other costs. Because of the potential for widely varying fines for traffic offenses, circuit judges and justices of the peace have adopted a uniform schedule of suggested fines for traffic offenders. For example, most speeding offenders will be assessed $2.00 per mile over the speed limit plus a $6.00 fee for police officer's training school. Someone going 53 in a 35 mph zone will be assessed $42.00 (2 x 18 plus $6.00). Other examples include expired registration, $30.00; expired driver's license, $30.00; equipment violation, $35.00; improper turn, $36.00; running a stop sign or red light, $35.00; reckless driving, $225.00.

Drunk driving is the greatest traffic problem faced by the criminal justice system. Utah law provides for two ways in which a driver can be found guilty of drunk driving. First, if a person operates a motor vehicle with a blood alcohol content of 0.08 percent or greater, meaning that if anyone has 0.08 grams of alcohol per 100 milliliters of blood, he can be charged under this section (blood-alcohol concentrations can be measured by either a breath test or a blood test). Second, when alcohol, regardless of its concentration, renders a driver incapable of safely operating a vehicle, he can be charged with drunk driving.

Drunk driving is a class B misdemeanor but carries with it a minimum of two days in jail or 24 or more hours of community service, plus numerous fees and fines, usually starting at $550.00. A second or subsequent conviction carries more mandatory jail time if the offenses occur within five years of each other. Fines and fees for drunk drivers often exceed $1,000.00, not including the attorney's fees. In addition, a driver's license is suspended for 90 days for a first offense and one year for the next offense.

Drunk driving is a class A misdemeanor if the driver injures another, a third degree felony if the driver kills another, and a second degree felony if the drunk driver kills another by driving in an especially reckless manner.

X. DRUG OFFENSES

Drug offenses are divided up in such a way as to punish people in possession of harmful drugs but to punish drug dealers more severely than drug users. The most common drugs used are marijuana, cocaine, LSD, heroin, amphetamines (speed), and barbiturates (downers).

Possession of marijuana is a class B misdemeanor, unless more than one ounce but less than a pound is possessed. Possession of one ounce to one pound is a class A misdemeanor, possession of one to 100 pounds of marijuana is a third degree felony, and possession of more than 100 pounds is a second degree felony. Also, possession of marijuana becomes an automatic class A misdemeanor upon a second conviction and a third degree felony thereafter.

Possession of all other illegal drugs is a third degree felony. Distribution or sales of marijuana is a third degree felony while the sale of most other illegal drugs is a second degree felony.

Possession or distribution of drugs on or near a school increases the severity of the offense by one degree.

XI. THE CRIMINAL JUSTICE PROCESS

An episode of "Cops" often ends with detectives taking a criminal away , if he is still alive, and the audience is led to believe the guy is going off to prison. The feeling we have at the time is that the case is over. In fact, that is when the criminal justice process begins.

The first step in the justice process usually involves the arrest. A peace officer may arrest a person anytime an offense has been committed in the officer's presence. Because most cases are not committed in an officer's presence, officers usually need a warrant to arrest an individual. Officers will meet with prosecutors and present information they have obtained which links a person to a crime. If probable cause exists to believe the person committed the crime, a warrant may be obtained from a judge. Bail is set and information is prepared advising the arrested person of the charges against him.

When a minor offense is committed in the presence of an officer, such as speeding or shoplifting, the officer may simply issue a citation, advising the person to appear in court to answer to the charges. A citation serves the same function as arresting and taking the person into custody.

Shortly after arrest, an individual must be brought before a judge and advised of the charges against him. The person then has a right to certain preliminary matters such as a line-up, a bail hearing, and a preliminary hearing, as well as certain motions. A preliminary hearing is like a mini-trial in that some of the witnesses are called to testify about the crime. Guilt is not the issue at the preliminary hearing, but rather, whether sufficient evidence exists to show that an offense has been committed and that the person charged committed it. Preliminary hearings only apply to felonies.

An arraignment is the hearing where the accused enters a plea, usually of either guilty or not guilty. If a person pleads guilty, he can be sentenced, but a not guilty plea sends the case to trial.

Trials for class C and class B misdemeanors can be held in justice of the peace courts. Juries for class C and B misdemeanors consist of four people. Circuit courts can hear trials for anything up to and including class A misdemeanors, as well as preliminary hearings on all felonies. All jury verdicts must be unanimous for guilt or innocence.

Felony trials are held in the district courts, and the outcome can be appealed to an appellate court. Appeals are a review of the proceedings or trial to ensure fairness. Only a convicted person has the right to appeal a finding of guilty. The state may not appeal if the person is found not guilty.

Many people express concern about the long delays often associated with the appeal process. A system of justice is set up to ensure that no innocent person shall be punished for crimes not committed and so every potential error is looked at closely. It takes a lot of time, but the alternatives have made it necessary. Few people in this country would disagree that this often cumbersome justice system is a model for individual rights.

APPENDIX

ORGANIZATIONS TO KNOW -- CHAPTER TWO

Criminal Law Section

F.B.I.
257 East 200 South #1200
Salt Lake City, Utah 84111
Phone: 579-1400

Al-Anon
5056 South 300 West
Salt Lake City, Utah 84107
Phone: 262-9587

Bonneville Community Correctional Center
1141 South 2250 West
Salt Lake City, Utah 84104
Phone: 975-4010

Fremont Community Correctional Center
2588 West 2365 South
West Valley City, Utah 84119
Phone: 972-8651

Orange Street Community Correctional Center
80 Orange
Salt Lake City, Utah 84104
Phone: 533-6360

Women's Community Correctional Center
322 East 300 South
Salt Lake City, Utah 84111
Phone: 364-1658

Community Counseling Center
660 South 200 East, #308
Salt Lake City, Utah 84111
Phone: 355-2846

Department of Public Safety
Regulatory Licensing Services
4501 South 2700 West
Salt Lake City, Utah 84119
Phone: 965-4484

Information and Referral Service
212 West 1300 South
Salt Lake City, Utah 84101
Phone: 487-4716

Odyssey House
Drug Treatment Center
68 South 600 East
Salt Lake City, Utah 84102
Phone: 322-1001

Odyssey House
Adolescent Facility
623 South 200 East
Salt Lake City, Utah 84111
Phone: 363-0203

Project Reality
150 East 700 South
Salt Lake City, Utah 84111
Phone: 364-8080

Rape Crisis Center
2035 South 1300 East
Salt Lake City, Utah 84105
Phone: 467-7282
Emergency 467-7273

Salt Lake City Police Department
200 South 315 East
Salt Lake City, Utah 84111
Phone: 799-3100

Salt Lake County Jail
Jail Administration
437 South 200 East
Salt Lake City, Utah 84111
Phone: 535-5988

Salt Lake County Sheriff's Department
437 South 200 East
Salt Lake City, Utah 84111
Phone: 535-5441

Suicide Prevention Crisis Service
Salt Lake Valley Mental Health Department
1228 South 900 East
Salt Lake City, Utah 84105
Phone: 483-5444

Suicide Prevention Helpline
Toll free: 1-800-333-4444

Utah Alcoholism Foundation
Family Alcohol Counseling Service
2880 South Main Street, Suite 210
Salt Lake City, Utah 84115
Phone: 487-3276

Utah State Corrections Department
6100 South 300 East
Murray, Utah 84107
Phone: 265-5500

Utah State Prison
P. O. Box 250
Draper, Utah 84020
Phone: 576-7000

Utah State Office of Education
Verne Larsen, Education Specialist
Substance Abuse Prevention Program
250 East 500 South
Salt Lake City, Utah 84111
Phone: 538-7713

CHAPTER TWO

CRIMINAL LAW

"Where You Live" Questions and Answers

p. 56. **What is the major crime problem in your community? What crimes have increased most over the last three years? Have any crime rates decreased during this period? Where can you get this information?**

The major crime problem in the state of Utah is burglary and larceny which made up 9% and 40%, respectively, of the crimes committed in Utah last year. The following crimes increased the most over the last three years: murder, rape, larceny, auto theft, and arson. The following crimes decreased last year in Utah: burglary, robbery, and aggravated assault. This information is available from the crime analysis units of Salt Lake County Sheriff's and Salt Lake City Police Departments, the F.B.I., and the Utah Department of Public Safety.

p. 66. **Does your community have any crime prevention programs? Does it have any victim or witness assistance programs? What services do these programs provide?**

The State of Utah has many crime prevention programs and victim and witness assistance programs. One of these is the Neighborhood Watch Program in which neighbors ban together to prevent burglary and theft in their neighborhood. For more information on all the different programs call the Utah Council for Crime Prevention at 486-8691.

p. 68. **Is there a suicide hot-line or other suicide prevention program in your area? If so, how does it operate? Are there specific programs for teens or the elderly?**

Both a suicide hot-line and other suicide prevention programs exist in the State of Utah. The toll free number for Suicide Prevention Helpline is 1-800-333-4444. For information on specific programs call the Suicide Prevention Crisis Service of the Salt Lake County Mental Health Department at 483-5444.

p. 74. **What laws, if any, control gun possession in your area? Are they effective?**

The State of Utah, like other states, recognizes the public's right to own and to purchase guns. There are a few restrictions connected with this right which is guaranteed by the Utah State Constitution. For example, no one under the age of 18 years (a minor) may possess a firearm without the permission of a parent or guardian. No person of any age may carry

a concealed weapon. Also, no person may carry a loaded gun in a vehicle or on a public street. Exceptions to these rules are obviously given to law enforcement officers.

Utah law further restricts guns to provide that no person who has ever been convicted of a violent crime nor anyone addicted to drugs or who is mentally ill may own a gun. Additionally, no person who is on probation or parole for a felony may own a gun.

In 1992, the legislature passed a law which made shooting a gun from a car (such as in a drive-by shooting) a felony which carries up to five years in prison.

p. 83. **How does your court system handle drunk drivers? Does it treat adults and juveniles differently? Are there programs in your community designed to help teens and adults with alcohol problems?**

In Utah, driving under the influence (DUI) is a misdemeanor punishable by up to 6 months in jail and a fine of $1,000 plus other fees. If a drunk driver injures or kills someone, the punishment increases and can go as high as 15 years in prison.

Sixteen- and 17-year-old drunk drivers are treated the same as adults, even though they are still juveniles. Utah law provides that a person who is responsible enough to operate a car is responsible enough to be punished as an adult for driving drunk.

There are many programs throughout the State of Utah designed to help all portions of the population with drug or alcohol problems. For information call the Information and Referral Center or Utah Alcohol Foundation. See Appendix for phone numbers.

p. 93. **Make a chart showing the steps in your state's criminal justice system. Who could help you get the information needed to make this chart?**

There are many steps involved in Utah's criminal justice system. The most important follow on the next page:

FELONY
(punishable by death or imprisonment in prison)

ARRAIGNMENT

1. Be advised of constitutional rights.
2. Receive a copy of complaint.
3. Enter plea or not guilty.
4. Appointment of counsel or request continuance to obtain own counsel.
5. Bail setting.

PRELIMINARY EXAMINATION

1. If complaint is filed, hearing is held to determine if probable cause exists to hold defendant to answer on the charges. (If grand jury indictment is filed, defendant may not be entitled to this hearing.)
2. Magistrate may dismiss case if evidence is insufficient. (Case may be settled prior to trial by plea bargain.)

TRIAL
(same general procedures as in misdemeanor cases)

SENTENCING

1. Court usually refers defendant to probation office for presentence report to include defendant's background, prior criminal record, and recommendation as to punishment.
2. Sentencing hearing usually occurs within three to five weeks after conviction either by plea bargain or guilty verdict rendered at trial.

MISDEMEANOR
(punishable by imprisonment in a local jail and/or fine)

ARRAIGNMENT

1. Be advised of constitutional rights.
2. Receive a copy of complaint.
3. Enter plea of not guilty.
4. Appointment of counsel or request continuance to obtain own counsel.
5. Bail setting.
(Case may be settled prior to trial by plea bargain.)

TRIAL

1. Jury selection. (If court trial is conducted, jury waiver by defendant should be made.)
2. Opening argument by counsel.
3. Prosecution presents evidence such as clothing, documents, and demonstrative objects.
4. Defense presents evidence or may elect not to present any evidence.
5. Closing arguments by counsel.
6. Jury instructions given by judge.
7. Verdict is rendered (guilty or not guilty) or a mistrial is declared.

SENTENCING
(same general procedures as in felony cases)

**The information needed to make a detailed chart of the steps involved in the criminal justice system could be found by calling the criminal division of any of the Utah State Courts.

p. 110. **What is the practice regarding Miranda warnings in your area? How do the police provide warnings to people who are deaf, mentally retarded, or who speak a language other than English?**

In the state of Utah, any person accused of a crime must be informed of their constitutional rights before they are questioned. The only exception to this rule is the "public safety" exception which states that a police officer may ask questions concerning public safety before advising the suspect of his or her rights.

All law enforcement agencies, specifically the Police Department and the Sheriff's Department, have employees who are trained to handle different situations during an arrest. If the suspect is mentally or physically impaired or doesn't speak English, the officer would request help from someone who knows sign language, is bilingual, or trained for the particular skill necessary to impart the Miranda Warnings.

p. 132. **Does your community have any prisons, jails, or halfway houses? Who is kept there? What are the living conditions like in these institutions? What rights do the inmates have?**

The State of Utah has prisons in Gunnison and Bluffdale, Utah. Additionally, most every county has a jail. There are also several types of half-way houses. The prisons are usually reserved for convicted felons who are serving out sentences. Jails are for people awaiting trial or who have been convicted of misdemeanors or minor felonies where a judge decides that a shorter term is appropriate. Jails are more of a temporary holding facility than are prisons. In jail most of the inmates won't spend more than a year locked up. Some may do as little as a day or two or are released during the day to go to work. Half-way houses are specially designed facilities where treatment is usually the focus. Sex offenders, drug addicts, and alcoholics will often do part of their "time" in a half-way house where they may be either locked up all of the time or allowed to go to school or work during the day. Some long-term prison inmates will be released to a half-way house toward the end of their sentence in order to help them learn skills which will help them as they try to re-enter society.

According to the law, living conditions at prisons and jails must be satisfactory for the inmates. Although it is not a preferable place to be, the facilities must be as clean and

comfortable as possible. They must have medical and other specialized personnel available for the inmates.

An inmate at a jail, prison, or half-way house loses some of the privileges the rest of us take for granted. They are subject to searches, their visitation is restricted and obviously, their movement is severely limited, but accommodations for recreation, mail, telephones, and visitations must be afforded to inmates. When an inmate feels that he or she is being treated unfairly or not receiving necessary care, they may petition a court to hear them by filing a **Writ of Habeas Corpus**, which gives them the opportunity to let a judge determine if their confinement is legal.

JUVENILE LAW SECTION*

I. INTRODUCTION

As is clear from the previous chapter, persons under eighteen years of age are treated differently than adults in Utah. A juvenile court system is designed to help rehabilitate rather than merely punish young people charged with violating the law. Its goal is to rehabilitate and protect the welfare of juveniles while protecting society against delinquent acts. Consequently, proceedings in juvenile court are civil, rather than criminal, in nature. A youth found guilty of an offense in juvenile court is found to have committed a delinquent act, and not considered convicted of a crime. Still, juveniles accused of delinquent acts are afforded many of the protections afforded adults in criminal matters.

Utah law provides that juvenile courts have jurisdiction (or authority over) any person under age eighteen who:

(a) violates state, federal or local law or municipal ordinance; or

(b) is neglected or dependent; or

(c) is a habitual truant, despite school and parental efforts.

In the above cases, the juvenile court may retain jurisdiction over a "juvenile" until he or she reaches the age of twenty-one. For instance, if an individual commits a crime just before his eighteenth birthday, the court may order that person to pay a fine even if, by the time the court makes the order, the individual has turned eighteen.

The juvenile court may also have jurisdiction in the following matters:

(d) to determine the custody of neglected and/or dependent children;

(e) for judicial consent for marriage, employment or enlistment of a child when such consent is required by law; and

(f) for the treatment or commitment of mentally ill or mentally retarded children who come under the court's jurisdiction.

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*This section was written by Steven Kuhnhausen of the law firm of Collard, Kuhnhausen, Pixton and Downes; Patricia A. DeMichele of the law firm of Moyle and Draper. It was updated, for this edition, by Kim Rilling of the law firm of Rilling and Associates.

II. ENTERING THE SYSTEM

A minor enters the juvenile justice system in one of two ways. A police officer, or in some instances a private citizen or probation officer, may take the youth into custody. In other cases, a referral may be made to an intake worker in juvenile court regarding the child and his activities.

A police officer may take a minor into custody for several reasons: the officer may see the child violating a law; there may have been good reason to believe the child committed an act which would be a felony if committed by an adult; the child may be seriously endangered by his environment (neglected or dependent) or may pose a serious danger to others; or the officer may reasonably believe the child ran away from a parent or guardian.

When a juvenile is taken into custody, the parents must be notified without delay. The juvenile must then be released to the parents or another responsible adult unless the minor's welfare or the protection of the community requires continued detention.

If the minor is not released, he or she must be immediately taken to the appropriate place for holding juveniles. Youths suspected of crimes are usually taken to a detention center. Most northern Utah counties follow the same procedure. Children who are neglected, dependent or abused are generally placed in shelter homes.

If a juvenile is not released, the person who took custody must inform the court of the facts bringing the child into the juvenile system and the reason(s) the child was not released. Parents must be notified at this stage, if they have not already been contacted.

A juvenile cannot be held in detention or in a shelter home for more than 48 hours without a court hearing. This period excludes weekends and holidays. At the hearing the judge will decide if the child should be allowed to return home or to an alternative placement. If the judge decides to hold the child, a petition must be filed within five days or the child will be released. Of course, the court can keep a child in detention or shelter care after a petition has been filed for a period in excess of 48 hours.

Juvenile justice theory discourages detaining juveniles in adult jails, and no youth under sixteen years of age may be legally held in jail in the same holding area as adults. In rural areas, however, there are often no juvenile facilities and youths may be temporarily placed in jails out of necessity. In addition, a juvenile over sixteen may, under certain extreme circumstances, be held with adults.

The juvenile system does not provide for bail, except in very rare cases, for juveniles who are in custody. In other words, generally speaking, juveniles must either be released or held as the court determines.

In Utah, juveniles charged with violations of the law are given certain special rights: they are protected from publicity; when photographs are permitted by the judge, they are kept confidential; fingerprints may be taken only with the express permission of a judge; if a juvenile requests, a youth's parents or attorney are allowed to be present during any questioning; and, a police officer must obtain the court's permission to question a child who is in custody.

In addition to these special rights, juveniles have many of the same protections given adults in criminal proceedings: juveniles in custody must be given their Miranda rights; notice of any charges must be given to the minor and his parents; the minor has the right to an attorney and to a trial; alleged violations of the law by a juvenile must be proven beyond a reasonable doubt; and, the juvenile has the right to appeal the judge's decision.

A juvenile may come before the court from a referral to an intake worker because of delinquent behavior or a dangerous home situation. In such cases the juvenile and his or her parents are asked to speak with the intake worker to determine facts of the case. The intake worker has several choices. If there appears to be insufficient evidence of the juvenile's involvement in a crime, the case is returned to the referring agency for further investigation. If the youth admits to the offense, the intake worker may close the case unofficially (nonjudicial closure), rather than take it before the judge. If the juvenile denies the charge, and there appears to be sufficient evidence, the intake worker must file a petition with the court so that the judge can determine an appropriate course of action.

Once a petition is filed for formal action to be taken against a juvenile, the juvenile must be given a chance to admit or deny the allegations stated in the petition, to a juvenile court judge. (This first hearing on the allegations is called "arraignment.") If the allegations are admitted, the judge may impose the disposition (e.g., a fine) or may set another hearing date for the disposition. If the allegations are denied, the case is referred to the county attorney's office for prosecution. The juvenile is then entitled to a pretrial and trial.

As with arraignments and trials, the juvenile may have his or her attorney present at the pretrial. At pretrial, unlike the trial, no witnesses are present. Often cases are settled by "plea bargaining" at the pretrial. If the case cannot be settled, a trial is then scheduled.

There is no right to a trial by jury for youth in the Utah juvenile justice system. This differs from the adult criminal system, where the defendant may request a jury trial.

At the closed trial held in juvenile court, a deputy county attorney represents the state. He must prove the allegations contained in the petition beyond a reasonable doubt. The attorney representing the juvenile defends against those allegations. As in adult proceedings, a juvenile has a "right against self-incrimination" and does not have to testify.

After the witnesses testify at trial, the judge decides whether or not the allegations in the petition are true. If they are found not to be true, the case will be dismissed. If the allegations are found to be true, the juvenile is said to be within the jurisdiction of the court and the court may impose the disposition. The juvenile then has the right to appeal this decision to the Utah Court of Appeals.

III. DISPOSITION

When the allegations in any juvenile petition are found to be true, the judge must then decide what to do with the juvenile involved (disposition). The main concern in disposition is the best interest of the child, but the protection of the community and loss to the victim may also be considered. In deciding on an appropriate disposition, the judge considers the juvenile's previous record and the seriousness of the charges, and in cases of neglect or dependency, it considers the ability of the parents to care for the child.

Often minors who violate the law are fined or given community service hours for their first offense. There are many other possibilities. For instance, if a victim has suffered a monetary loss as a result of a juvenile's acts, the offender may be ordered to pay back the loss (restitution).

If the juvenile needs structure and guidance, a period of probation may be ordered. During this time the minor must report at regular intervals to a probation officer, who will decide what particular activities or counseling will best help the youth. Requirements of probation differ in every case because they are designed to fit the individual needs of each juvenile.

When a still more structured environment is needed, the child may be taken out of his or her home and placed in a group, foster or proctor home or residential program. There are "parents" who live at the home and are responsible for the juvenile living there. They set up programs for each child. The programs usually include special school programs, counseling, work around the house and sometimes employment.

Finally, the juvenile court may commit the juvenile to the care and custody of the Department of Youth Corrections for community placement, for evaluation or secure care. There are secure care facilities (these are essentially prisons for juveniles) in Salt Lake City, Ogden, and Cedar City, Utah.

IV. TREATMENT OF JUVENILES AS ADULTS

Under certain circumstances a juvenile may be treated as an adult criminal defendant. This may happen through "certification" or "direct filing" procedures.

The prosecutor may only directly file a charge against a juvenile under certain circumstances. The direct filing procedures allow the prosecutor to file a charge in the adult court, bypassing the juvenile system. Until recently, any juvenile who had been charged directly in the adult system could request the court to "recall" his or her case to the juvenile court. However, in the fall of 1993, the Utah Legislature passed a law stating that the juvenile court no longer has jurisdiction over juveniles who are at least 16 years old and accused of aggravated homicide. That is, all aggravated homicides, allegedly committed by someone 16 years of age or older, must be filed in the adult system. The case cannot be recalled to the juvenile court because the juvenile court no longer has the power, or jurisdiction, to hear such a case.

If a juvenile, who is at least 16 years old, is accused of murder, or of using a weapon in the commission of a criminal homicide, attempted criminal homicide, or any other offense that would be a capital offense or a first degree felony if committed by an adult, the charge may be filed directly in the adult system or in juvenile court. If the charge is filed in the adult system, it cannot be recalled to juvenile court.

There are other instances where a case may be filed directly in the adult system. In these cases the juvenile must be at least 16 years old and must have committed one of a few serious and specifically enumerated felonies, such as aggravated robbery or aggravated sexual abuse. In these situations, the juvenile can request that his or her case be recalled to the juvenile court. The recall hearing is held in juvenile court. The judge considers only three narrow issues: the juvenile's age; the juvenile's record; and the nature of the serious charge. The judge may decide to recall the juvenile's case to juvenile court or deny the **Motion to Recall**. If the motion is denied, the juvenile will be tried and if found guilty, sentenced in the adult criminal system.

Certification is the other method used to treat juveniles as adult defendants. A **Motion for Certification** is filed by the prosecutor in juvenile court. This motion can be filed if the juvenile is at least 14 years old and has allegedly committed a

crime that would be a felony (any felony, including the more serious felonies mentioned in the preceding paragraph) if committed by an adult.

In the certification hearing, the juvenile court judge considers many more factors than he or she may consider in a recall hearing. If the judge grants the Motion for Certification, the case is transferred to the adult system. If the motion is denied, the juvenile will be prosecuted in the juvenile system.

As you may have guessed, cases may arise where the prosecution has a choice between directly filing a charge in the adult system or requesting that the case be certified. For example, aggravated burglary is one of the few specifically enumerated serious charges that permits direct filing. A regular burglary is not one of the specifically enumerated charges that allow for direct filing, but it is a felony. If a juvenile accused of aggravated burglary is 17 years old, both the direct filing and certification request requirements have been met, then the prosecutor may use either method in his or her attempt to have the case heard in the adult system. However, if a juvenile accused of this crime is 15 years old, the prosecutor cannot directly file the charge, but may seek certification. If a juvenile is, say, 17 but is accused of burglary, instead of aggravated burglary, the prosecutor cannot directly file the charge but can request certification.

Keep in mind that, except in cases of aggravated homicide as mentioned above, a prosecutor is not required to seek prosecution in the adult system. Cases often arise where the law permits direct filing or a certification request by the prosecutor, and the prosecutor, believing that the juvenile court can adequately handle the matter, decides not to directly file or request certification.

However, in cases where prosecution of a juvenile as an adult is sought and the juvenile court judge denies the juvenile's Motion for Recall or grants the prosecutor's Motion for Certification, the juvenile may appeal the juvenile court decision to the Utah Court of Appeals. The appellate court must review the lower court proceedings to determine if placement of the juvenile in the adult system was proper. Strange though it may seem, the case in the adult system can go forward even before the appellate court has made its decision. Still, proceedings in the adult court are ultimately dependent upon the appellate court's decision.

No matter how a juvenile ends up in the adult system, if he or she is convicted, the judge may sentence the juvenile as if he or she were an adult. That is, a juvenile may face a lengthy sentence in the Utah State Prison. If the juvenile is acquitted or the charge is dismissed, the juvenile court regains jurisdiction over the juvenile.

V. NEGLECTED AND DEPENDENT CHILDREN

The juvenile justice system does not deal solely with violations of the law; the juvenile court also has power over neglected and dependent children.

A **dependent** child is one who is destitute, homeless or without proper care through no fault of the parents or custodian. A **neglected** child is one who is abandoned or lacks parental care and is in danger either physically or emotionally. A neglected or dependent child may be temporarily removed from his home and placed by the court in the custody of the Utah State Division of Human Services or some other licensed child-placement agency, prior to placement in a foster home. Removal of a child from the home is usually a last resort, after attempts have been made to assist the parents and the child to solve whatever problems exist. If the child is removed, the Division of Human Services must help the family solve these problems to enable the safe return home of the child.

In very serious cases, the court may end all the rights parents have to the child, and a home will be found where the child can be adopted and given a new family.

VI. COURT RECORDS

Each juvenile court keeps records of the petitions filed and their outcomes. Also, probation workers and other workers file reports which are called social histories. These describe the juvenile's home situation, how he or she is doing in school and at work, the results of psychological tests and other facts important to the court in deciding what is best for the juvenile.

The legal records are open to the juvenile, his or her parents, and to attorneys representing the juvenile. The social history record may be reviewed only with the consent of the judge. The military is not entitled to have access to these records.

When a juvenile is found to be within the jurisdiction of the juvenile court, Utah law allows continued jurisdiction until that person reaches the age of twenty-one. Of course, the judge may decide to end jurisdiction earlier and usually does, if the child has no more involvement with the court, or has moved into the adult system.

After a child has come within the court's jurisdiction, he or she may later ask the court to **expunge** the court's record. This means that the court orders the records to be sealed so that they cannot be seen by anyone. The minor may file a petition asking the court for the expungement hearing one year from the date jurisdiction was ended. If the judge finds that the minor has

stayed out of trouble, expungement will usually be granted. The youth will thereafter be treated as if the court involvement never occurred.

APPENDIX

ORGANIZATIONS TO KNOW -- CHAPTER TWO

Juvenile Section

Decker Lake Youth Center
Division of Youth Corrections
2310 West 2710 South
West Valley City, Utah 84119
Phone: 972-8414

Salt Lake County Attorney
Juvenile Division
3522 South 700 West
Salt Lake City, Utah 84119
Phone: 265-5938

Salt Lake County Youth Services Center (YSC)
3999 South Main Street
Suite N-2
Murray, Utah 84107
Phone: 264-2273

Salt Lake Detention Center
3534 South 700 West
Salt Lake City, Utah 84119
Phone: 265-5830

Utah State Prison
Young Adult Corrections Facility
Phone: 576-7000

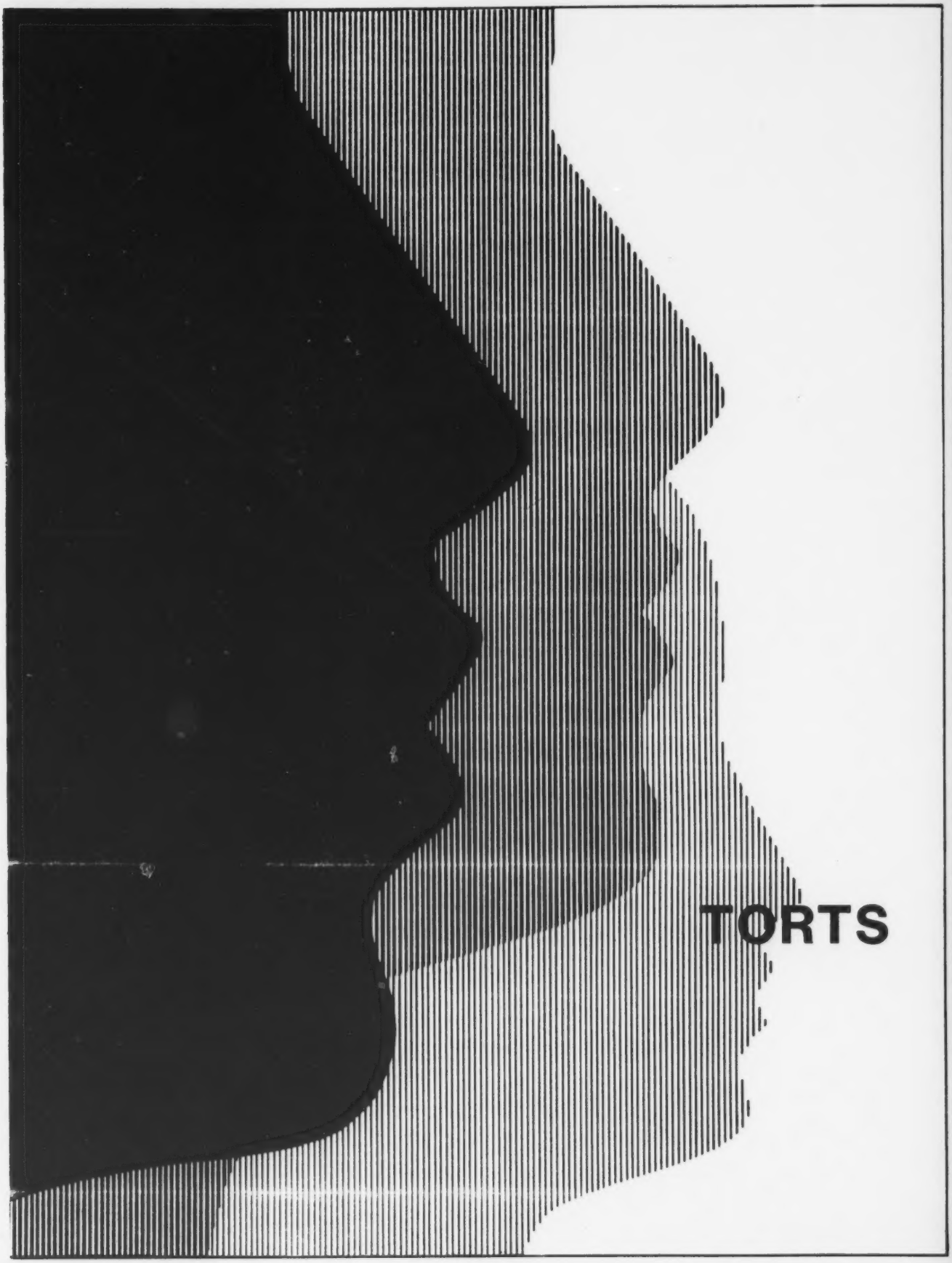
CHAPTER TWO

JUVENILE LAW

"Where You Live" Questions and Answers

p. 147 **Where are juvenile offenders placed in your state and community? What is the maximum length of time for which a juvenile can be committed to a juvenile institution? What happens to status offenders in your community?**

Juvenile offenders are held in detention centers if they are of danger to themselves or to the community until the disposition of their case. At disposition the judge may order the juvenile to any number of different placements, including return home or school care. There is no set time limit. A secure facility can hold a juvenile until age twenty-one. Alcohol, tobacco, or truancy violations are automatically referred to juvenile court. Ungovernables and runaways are only referred to the juvenile court if all else fails, i.e., if other agencies cannot solve the problem.


TORTS

CHAPTER THREE

TORTS*

I. INTRODUCTION

In criminal law, when someone commits a wrong we call it a crime. In civil law, when a person commits a certain wrong against another person or against property of another person, it is a tort. The set of rules which govern these civil wrongs is called tort law. Knowledge of tort law can help people understand their rights, as well as their obligations to others.

In many cases, the same conduct which subjects an individual to criminal liability may also subject that person to civil tort liability. For example, if a person goes out, without provocation, and physically beats someone up, the aggressor may be charged with criminal assault and battery. Similarly, a drunk driver who hits and kills another person may be charged with the crime of automobile homicide and also may be a defendant in a civil tort action for negligent wrongful death.

Why do we have two separate legal systems, one criminal and one civil? The answer is in the purpose to be accomplished by the two systems. In general terms, the criminal system is designed to punish criminal wrongdoers, either through fine or imprisonment or both. Criminal actions are brought on behalf of the people of a particular jurisdiction and are prosecuted by state or municipal law enforcement agencies. The purpose of a civil action, on the other hand, is to provide financial compensation to the victims of civil wrongdoing. Civil actions are brought by the individual who has been injured or otherwise damaged. The civil action is brought against the wrongdoer who, in many circumstances, is defended by an insurance company providing liability insurance to the wrongdoing individual.

Another difference between the criminal justice system and the civil justice system is the **burden of proof** which must be satisfied before finding an individual responsible for wrongful conduct. In the criminal system, an individual must be found guilty **beyond a reasonable doubt** before being convicted of a crime. In the civil system, the standard is more relaxed. In a tort case, the plaintiff must prove the elements of the claim against the defendant by a **preponderance of evidence**. A preponderance of evidence means the greater weight of evidence, or evidence which is more likely true than the evidence against it. Any preponderance

*This chapter was written by Gordon K. Jensen. Mr. Jensen acknowledges significant reliance on, and assistance from, Utah Tort Law and its supplements, copyright Professor Donald N. Zillman.

of evidence greater than fifty per cent is enough to satisfy the plaintiff's burden of proof in a civil tort case.

There are three major categories of conduct for which tort liability exists: **intentional wrongs**, **negligent acts**, and activities for which **strict liability** is imposed. An intentional tort occurs when an individual takes some action with the intent of injuring a person, a person's property, or both. Negligence occurs when a person's failure to use reasonable care causes harm to another person or property. Strict liability applies when a defendant is engaged in an activity so dangerous that there is a serious risk of harm to others even if the defendant acts with the utmost care. Strict products liability occurs when a company or individual designs or manufacturers a product which is defective and the product causes harm to its user or consumer. Under those circumstances, the manufacturer is responsible for the injury, even if the manufacturer exercised the utmost care in the manufacture and design of the product. In this chapter, we will review these three categories of tort liability in more detail.

II. INTENTIONAL TORTS

A. Torts That Injure Persons

1. Assault and Battery

Generally, an **assault** is a threat or an attempt to commit a harmful or offensive contact (battery) that puts the victim in fear of immediate harm. **Battery** is that act which causes harm or offensive contact with another person. Many times, a court may not distinguish between assault and battery. A plaintiff may pursue a civil action for assault or battery even though the defendant may also be subject to criminal prosecution. Utah case law defines an assault as "an unlawful attempt coupled with a presumed ability to commit an injury on the person of another." The unlawful or offensive contact constitutes battery. The Utah Supreme Court, however, has recognized that in our social interaction with others there may be unconsented touching, such as brushing up against someone in an elevator. In most circumstances, this type of touching would be deemed so trivial that it will not constitute assault or battery. Consent, mutual combat, and self defense are common defenses to assault and battery claims.

2. False Imprisonment and False Arrest

Utah recognizes the intentional torts of false imprisonment and false arrest. **False imprisonment** occurs whenever "there is an unlawful detention or restraint of another against his will." A claim for false imprisonment may be made even if the inconvenience to the plaintiff is minor. These situations most often arise when shoppers are detained without cause in department

stores. The Utah legislature has, however, given merchants the privilege of detaining and questioning persons suspected of shoplifting if the merchant has reason to believe that goods were taken by that person. The merchant may only detain such an individual in a reasonable manner and for a reasonable length of time. If the merchant acts reasonably under the circumstances, that is a defense to any false imprisonment claim. The term **false arrest** seems to require some assertion of special authority to confine someone, such as the authority of a police officer or security guard. The Utah Supreme Court has stated that false arrest is part of the particular circumstances surrounding a false imprisonment claim.

3. Intentional Infliction of Emotional Distress

Utah recognizes the tort of intentional infliction of emotional distress against a person who intentionally causes severe emotional distress to another through extreme and outrageous conduct. No bodily contact or physical injury is required. It is required, however, that the defendant's conduct be outrageous and intolerable. Usually, that will be decided by a jury considering all the facts of the case. Utah courts have recognized actions for intentional infliction of emotional distress when, among other things, a defendant made repeated proposals for sex with a married woman, when a man offended or threatened a pregnant woman's husband with a gun in the pregnant woman's presence, and when a landlord evicted a tenant and unlawfully retained the tenant's personal property.

4. Defamation and Invasion of Privacy

(a) Defamation

Tort law protects your reputation and your right to privacy. Your reputation is protected by the law of **defamation**, which includes libel and slander. Generally, **slander** involves oral statements that damage your reputation, while **libel** involves written statements. The law of defamation covers both libel and slander. The Utah Supreme Court has stated that, to provide the basis for a tort claim, defamation must hold a person up to hatred, contempt or ridicule, or injure him in his business or vocation. Utah law allows an action for slander to proceed, even without an allegation that special harm was caused by the slander, if the words fall into one of the following four categories: (1) a charge of criminal conduct; (2) a charge of a loathsome disease; (3) a charge of conduct that is incompatible with the exercise of a lawful business, trade, profession, or office; and (4) a charge of the unchastity of a woman. This is known as **slander per se**. In these cases, damage to reputation is presumed from the nature of the statement made. If the defamatory statement does not fit within one of these categories, the plaintiff must prove actual damage resulting from the slander in order to recover from the defendant.

Utah also recognizes the distinction between a public figure and a private figure in defamation cases. A public figure must prove, not only that a statement was false and caused harm, but also that the statement was made with malice, that is knowing that the statement was false or with reckless disregard for whether it was true or false.

In Utah, truth is a complete defense to a defamation action. The plaintiff has the burden of proving that the statement was false. The party pleading truth as a defense doesn't have to prove the "literal truth" of the statement. Utah has adopted a standard which allows a defendant to make insignificant inaccuracies of expression, as long as the defamatory charge is true in substance.

(b) Invasion of Privacy

Legal commentators on invasion of privacy have generally developed four different categories of privacy rights which, if violated, can result in a tort claim against a defendant. Those categories include: intruding on the seclusion of an individual; appropriating a person's name, picture, or portrait for commercial gain; placing an individual in a false light; and publically disclosing embarrassing private facts. Until recently, Utah courts had not specifically recognized those four categories of invasion of privacy. In a case decided in 1992, however, the Utah Court of Appeals acknowledged the existence of those four categories of invasion of privacy, but only addressed the first, intrusion of the seclusion of an individual. The court determined that an individual could bring a tort claim against anyone who intrudes upon the privacy or seclusion of a person in a manner highly offensive to a reasonable person. In that case, private investigators, disguised as product marketing representatives, entered the plaintiff's home five or six times. The investigators wanted to find out about the plaintiff's husband's workers' compensation claim. They had no interest in the products they were having the plaintiff test market. The plaintiff brought a tort action against the investigators for invasion of privacy. The Utah Court of Appeals acknowledged that the tort of invasion of privacy into the seclusion of an individual exists in Utah, but upheld a jury verdict finding that this particular invasion of privacy was not highly offensive to a reasonable person.

B. Torts Against Property

1. Torts Against Real Property

(a) Trespass

Utah recognizes the torts of trespass and nuisance. A trespass occurs when an individual goes onto the property of another without permission. A tort action in trespass is designed

to compensate the property owner for an injury to the property owner's right of possession caused by the trespass. Damage for trespass may compensate the landowner for actual harm to the property or may merely reflect the fact that the plaintiff is entitled to possession of the property against the trespasser. Compensation damages should reflect the difference in the value of the property before and after the trespass. Utah courts encourage a flexible approach to compensation based on reasonableness. Punitive damages may be awarded for flagrant trespass and damage to property.

Included in the law of trespass is the law of trespass regarding domesticated animals such as cattle, sheep, and horses on neighboring property. Historically, the owners of such domesticated animals are strictly liable for damage done by their animals to neighboring property. Strict liability will be discussed later in this chapter. Most counties have ordinances requiring the fencing of property to keep domesticated animals from roaming.

(b) Nuisance

Utah statutes define a **nuisance** as anything "injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." A person whose property is being "injuriously affected", or whose "personal enjoyment is lessened", may bring an action to stop the nuisance. The action most commonly brought is for a court injunction. An **injunction** requires that the nuisance cease, or be limited. A tort action for damages caused by the nuisance is also available. Utah cases addressing alleged nuisances include emissions from a steel plant, and a drive-in cafe. Utah cases suggest that a nuisance is evaluated by its location, surrounding properties, financial considerations, and who was there first.

A common defense to a nuisance claim is that the plaintiff **"came to the nuisance"** and, therefore, has no right to pursue a tort claim. Generally, this situation happens when a defendant's activity began in a certain location far from residential or business development. Over time, as the community expands, it comes into contact with the activity claimed to be a nuisance. The new residents in the area then assert that the defendant's activity is a nuisance. Utah statutes provide some protection for manufacturing and agricultural activities in such circumstances. In order to defeat a nuisance action, the defendant must show that (1) it has been at its present location for more than three years; (2) that it was not a nuisance before the change in the neighborhood; (3) that the alleged nuisance is not due to any negligence or improper operation of the facility; and (4) that the defendant has not increased the condition claimed to be a nuisance.

2. Torts Against Personal Property

Tort law provides a remedy for individuals whose personal property is taken, damaged, or interfered with by another. There are criminal laws governing theft, larceny, and burglary. In addition to the criminal action, a tort action in conversion may be brought against the person who took or damaged the property. Utah courts define conversion as "the wrongful exercise or control over personal property in violation of the rights of its owner." Trover is the civil action designed to get the property back.

While conversion is an intentional tort and results only from intentional conduct, conscious wrongdoing is not required. For example, the defendant must only intend to exercise control over the goods inconsistent with the owner's rights to possession. A purchaser in the ordinary course of business who buys from an individual who doesn't have the right to sell the property may be subject to a conversion action. In order to maintain a conversion action, the plaintiff must be entitled to immediate possession of the personal property. A right to take possession of the property at some time in the future is insufficient to support a conversion claim.

In a conversion claim the plaintiff may recover the value of the property at the time the conversion occurred. The plaintiff has the burden of proving the value of the property, although courts have shown flexibility in determining value. A plaintiff may also recover out-of-pocket and other expenses incurred in tracking down the property or pursuing the conversion claim.

III. NEGLIGENCE

A. Duty

The Utah Supreme Court has defined the essential elements of negligence as: (1) a duty of reasonable care owed by the defendant to the plaintiff; (2) a breach of that duty; (3) proximate causation between the breach of duty and the plaintiff's injury; and (4) resulting damage to the plaintiff. The formula of duty, breach of duty, causation, and damages must be proved by the plaintiff by a preponderance of evidence.

Each of us has a duty to exercise reasonable care toward other people and their property. The amount of care that is considered "reasonable" depends upon the situation. Some situations require more care or caution because an ordinary person would understand that more danger is involved. In other situations, less care or caution is required where the risk of danger is low. Generally, a person must exercise greater care for the protection of young children than for adults. A person is expected to foresee and guard against the ordinary, impulsive behavior of children.

Duty is often defined by statute. For example, in Utah there is a motor vehicle code setting out conduct which is required of people driving cars. The violation of such a safety law is evidence of negligence which may be subject to explanation or justification. For example, a person may violate a traffic ordinance when faced with an emergency situation which the person did not create. Suppose a person has an unanticipated heart attack and runs through a red light, causing a crash. Those circumstances could be presented to the jury as justification for failure to obey the traffic signal.

The general standard of care is that of an ordinary prudent person. If, under all circumstances, an individual acts as an ordinary prudent person would, that person should not be found negligent. In determining the duty of a professional such as a doctor, lawyer, or accountant, expert testimony is often required to establish the level of duty in the profession and whether that duty was breached.

Recently, the Utah Supreme Court and Utah Court of Appeals have decided a number of cases addressing the duty of a governmental entity toward members of the general public. The courts have generally held that a duty to the public in general does not create a private duty on the part of the governmental entity toward a particular individual. These duty issues regarding governmental entities have become known as the **"public duty doctrine"** or the **"duty to all -- duty to none doctrine."** For example, the police department of the city may have a general duty to the public to try to keep drunk drivers off the road. That does not mean, however, that a person being injured by a drunk driver can pursue a negligence claim against the police department for failing to get a particular drunk driver off the road. The exception to this rule is if the governmental entity has a special relationship with the injured person which would put the government on notice of a duty to that particular plaintiff. For example, the courts have found that once a particular child is placed in a foster home by a State, the State then has a duty to exercise ordinary care in the supervision of that child and in the evaluation of acceptable foster parents.

B. Causation

Utah cases emphasize that the defendant's negligent conduct must "proximately cause" the plaintiff's damages. Utah courts have defined proximate cause as "that cause which, in natural and continuous sequence, produces the injury and without which the injury would not have occurred. It is the 'efficient' cause and must have played a substantial role in causing the injuries." There may be more than one proximate cause to an injury. If the negligence of two or more individuals combines to produce an injury and the negligence of each is a proximate cause of the injury, the jury will be asked to proportion fault between the parties. For

example, the plaintiff's car is stopped at a stop sign. Defendant number one, driving directly behind the plaintiff, crashes into the rear of the plaintiff's car. Right after that, defendant number two, driving behind defendant number one, crashes into defendant number one, pushing defendant number one's car into the back of the plaintiff's car a second time. The plaintiff would argue that both of the defendants were negligent for failing to maintain a proper lookout and following too closely. The jury would then decide the percentage of negligence attributable to each of the defendants as the negligence relates to the plaintiff's injuries. The jury may find defendant number one 65% responsible for the plaintiff's injuries and defendant number two 35% responsible for the plaintiff's injuries. In Utah, each defendant is responsible for its own percentage of negligence.

The plaintiff may also be charged with negligence which is a proximate cause of the injuries. For example, the plaintiff may be jogging down the wrong side of the road at night in dark clothes when she is struck from behind by a car driven by the defendant. The defendant will argue that the plaintiff's conduct was negligent. In Utah, if a plaintiff (the injured person bringing the claim) is 50% or more at fault for her injury, the plaintiff cannot recover anything from the other defendant or defendants. If, however, the plaintiff is less than 50% negligent, the plaintiff can still recover from the defendant or defendants, but the amount of recovery is reduced by the plaintiff's percentage of negligence. For example, if, in the jogging example, the jury found the plaintiff 40% negligent and awarded her $20,000 in damages, that $20,000 would automatically be reduced by 40% or $8,000. The plaintiff would receive $12,000.

IV. STRICT LIABILITY

Intentional torts and negligence involve a determination of fault against a defendant based on the defendant's conduct. Strict liability does not generally deal with an individual's fault, but addresses the nature of an activity or the condition of a product. As such, strict liability is often referred to as liability without fault. Strict liability essentially means that the defendant is liable to the plaintiff even if the defendant exercised reasonable care under the circumstances.

A. Dangerous Activities or Animals

Strict liability applies to activities that are unreasonably dangerous. Activities are considered unreasonably dangerous when they involve a risk of harm that cannot be eliminated even by the use of reasonable care. Many times, these activities are beneficial to society, but because of their potential for harm, those who participate in such activities are held to the high standard of strict liability. For example, companies that deal

with explosives or dangerous chemicals are often held responsible for any injuries caused by those activities, even if reasonable care was exercised.

Many states have enacted statutes making the owner of animals, particularly dogs, strictly liable for any injuries caused by the dog. Some states have a "one bite" rule under which the dog owner is not responsible for any injuries caused by the dog until that dog has bitten someone at least once. Utah law does not recognize the "one bite" rule. Utah law states that "every person owning or keeping a dog shall be liable in damages for injury committed by such dog . . ." It is not necessary for the person bitten by the dog to prove that the dog was in a "vicious or mischievous" disposition or that the owner or keeper of the dog knew that the dog was vicious. Utah does, however, recognize certain defenses in dog bite cases, such as provocation or trespass.

B. Strict Products Liability

The most common strict liability tort claim involves defective products and is called strict products liability. In 1979, the Utah Supreme Court officially recognized the theory of strict products liability set out in the Restatement of Torts. The Restatement of Torts is a digest of tort law and commentary compiled by scholars in the area of tort law.

The doctrine of strict products liability provides that one who sells any product in a "defective condition unreasonably dangerous to the user or consumer" is strictly liable for any physical harm caused to the ultimate user or consumer. That strict liability attaches if the seller is engaged in the business of selling such products and if the product reaches the user or consumer without a substantial change in the condition in which it was sold. That strict liability applies even if the seller has exercised "all possible care in the preparation and care of its product," and even if the user or consumer did not buy the product directly from the seller.

The term **"unreasonably dangerous"** means that the product is dangerous to an extent beyond that which an ordinary buyer would expect. A recent Utah case held that even if the seller complies with government standards in the manufacture of the product that may be insufficient to avoid strict liability. By contrast, if the manufacturer did not comply with government standards that is evidence, though not conclusive, of a defect in the product. Reported Utah cases on strict products liability have dealt with industrial and farm machinery, animal feed, food, chemicals, cars and car parts, crutches, champagne corks, burglar alarms, building materials, elevators, and rope.

Two defenses are generally recognized to a strict products liability claim. The first defense is **misuse of the product.** If

the plaintiff is using the product in a manner unanticipated by the manufacturer, that may be a defense to a strict products liability claim. For example, in one case, two young boys were burned when they lit a match and sprayed hair spray through the match at each other. Because that was a misuse of the hair spray, it was deemed a defense to the strict products liability claim. The other defense is if the plaintiff has a **"knowing awareness"** of the danger of the product which is coupled with the unreasonable use of the product. This, in essence, is an "assumption of the risk" defense. Utah courts don't like the term "assumption of risk" and state that it is included in charging the plaintiff with comparative negligence. As in any tort case, the defendant in a strict products liability case can also argue that the defective product was not the proximate cause of the plaintiff's injuries or that the plaintiff suffered no damage as a result of the defective product.

APPENDIX

ORGANIZATIONS TO KNOW -- CHAPTER THREE

For information regarding home and automobile insurance please refer to the yellow pages under insurance agents.

Utah Trial Lawyers Association
645 South 200 East
Salt Lake City, Utah 84111
531-7514

Utah State Insurance Department
3110 State Office Building
Salt Lake City, Utah 84114
538-3800

Better Business Bureau of Utah
1588 South Main
Salt Lake City, Utah 84115
487-4656

Consumer Credit Counseling Service
845 East 4800 South
Murray, Utah 84117

Job Service
(Utah State Government)
Metropolitan Job Service Center
720 South 200 East
Salt Lake City, Utah 84111
Placement Information (Applicants) 536-7167
Placement Information (Employers) 536-7004
Unemployment Insurance 536-7111

Salt Lake Community Council
451 South State Street
Salt Lake City, Utah 84111
535-7917

CHAPTER THREE

TORTS

"Where You Live" Questions and Answers

p. 164. **Are parents responsible for torts committed by their children in your state? Should they be?**

Under Utah statutes, parents are responsible for up to $1,000 for property damage caused by the reckless or intentional acts of their children. The statute was recently amended specifically to include damage caused by graffiti.

Regarding a minor's use of an automobile, Utah statutes provide that the owner of a motor vehicle who knowingly permits a person under the age of 18 to drive the motor vehicle on a highway, or any person who gives or furnishes a motor vehicle to the minor, are jointly and severally liable with the minor for any damages caused by the negligence of the minor in driving the motor vehicle. This provision makes parents responsible for damages caused in car wrecks involving children under the age of 18 if the parents own the car or furnish the car to the minor.

p.170. **What type and amount of auto insurance does your state require? Is there an uninsured motorists law? What does it provide? How much does auto insurance cost for high school age drivers in your state? Is there a discount for taking driver's education? Does the rate differ depending on the driver's age and the type and home location of the car?**

In 1993, the minimum amount of automobile liability insurance required by the state of Utah was raised from 20/40/10 to 25/50/15. This means that a person must have liability insurance that provides up to $25,000.00 to compensate for bodily injury or death to one person; $50,000.00 to cover bodily injury to or death of two or more persons in one accident, with no one person to receive more than $25,000.00; and $15,000.00 to cover damage to or destruction of the property of others, usually automobiles.

Utah also requires each driver to carry uninsured motorist insurance, unless the person has specifically requested that such coverage not be included on their insurance policy. Uninsured motorist insurance pays for injury, death, and damage if the responsible party involved in an accident does not have insurance, has insurance that covers less than the required amount, or if the responsible party is unidentified or left the scene of the accident. Uninsured motorist insurance must provide up to $25,000.00 for injury to one

person and up to $50,000.00 if more than one person has received injuries. Uninsured motorist insurance is generally sold as a part of a regular insurance policy.

The cost of auto insurance for a high school age driver will vary tremendously depending on many factors. These include whether the young person will be included on their parent's insurance, the young person's driving record, the age of the young person, if the young person has taken driver's education, where the automobile is principally garaged, and the type of auto the young person will be driving. As a general rule, the average cost of insuring a teenage male driver is 2 1/2 times the amount of insuring an adult driver.

p.174. **Is there a no-fault insurance law in your state? If so, how does it work?**

Utah has a no-fault insurance law which provides benefits to individuals injured in car accidents. Those benefits include a minimum of $3,000.00 in medical expense payments, loss of income of the lesser of 85% of an injured party's weekly lost wage or $250.00 a week, and up to $20.00 per day loss of household services. Lost wages and household service payments are made for one year only. The no-fault law also provides $3,000.00 payable to the heirs of a person killed in a car accident, as well as up to $1,500.00 in funeral and burial expenses, regardless of who is responsible for the accident. No-fault insurance is provided by the insurance on the car occupied by the injured person, or, if the injured person is a pedestrian or on a bicycle, no-fault insurance is provided by the insurance on the car striking the pedestrian or bicyclist. The insurance company of the individual responsible for the accident is required by statute to reimburse the insurer paying no-fault benefits.

p. 175. **Does your state have workers' compensation? Are all jobs covered? What are the principal provisions of your state's law? How effectively and fairly does the system work?**

The state of Utah has workers' compensation, but not all jobs are covered. Employers in the state are required to carry workers compensation insurance either with the state or with a private carrier. The principal provisions of the Utah law can be found in Utah Code Ann. Sections 35-1-1 et. seq. The law states that any employee who is injured on the job in a viable accident is entitled to compensation for loss due to injury or death and that the costs will be paid by the employer and its insurance carrier. It does not matter who was responsible for the injury.

There are four main types of workers compensation:

1. Temporary disability-the employee receives 66 2/3% of that employee's weekly wage which may not exceed 100% of the state average weekly wage.

2. Temporary partial disability-the employee receives 66 2/3% of the difference between the employee's average weekly wages before the accident and the weekly wages the employee is able to earn after the accident, but not more than 100% of the state average weekly wage at the time of the injury, plus $5.00 for a dependant spouse and $5.00 for each dependant child under the age of 18. Temporary partial disability may not be paid for more than 312 weeks or continue more than eight years after the date of the injury.

3. Permanent partial disability-an employee who sustains a permanent impairment as the result of an industrial accident may receive a permanent partial disability award. The amount of compensation will be 66 2/3% of the employee's average weekly wage at the time of injury, but not more than a maximum of 66 2/3% of the state average weekly wage plus $5.00 for a dependant spouse and $5.00 per dependant child. The number of weeks the compensation is paid will depend on what type of injury the employee has sustained. For example, if the employee loses a hand, he or she will be paid for 168 weeks.

4. Permanent total disability-an employee who sustains a total permanent disability will receive 66 2/3% of the employee's average weekly wage at the time of the injury. Compensation may not be more than 85% of the state average weekly wage at the time of the injury. The employee will receive compensation which is paid for by the employer and its insurance carrier for 312 weeks. Thereafter, the employee is eligible to receive funds from the Employer's Reinsurance Fund.

These benefits are paid for work-related injuries, regardless of who is responsible for the injury. If someone other than an employer or co-employee is responsible for the injury, the injured party may pursue a negligence claim against that third party. The workers' compensation insurer has a right to be reimbursed from the proceeds of any such negligence claim.

The fairness and effectiveness of the system can be debated. While employees are entitled to these benefits regardless of who is responsible for the injury, unless a non-employer or non co-employee causes the injury, the employee's recovery is limited to the statute, with no separate pain and suffering damages available.

p. 185. **Is invasion of privacy a tort in your state? How are individuals protected by this tort?**

Utah recognizes the tort of invasion of privacy. Invasion of privacy encompasses four distinct torts: 1) intrusion upon the plaintiff's seclusion or solitude, or private affairs; 2) public disclosure of embarrassing private facts; 3) publicity which places the plaintiff in a false light in the public eye; and 4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

The invasion of privacy must be highly offensive to a reasonable person. Once a party establishes a cause of action for invasion of privacy, that party may recover out of pocket losses, as well as mental distress damages resulting from the invasion of privacy.

p.191. **Is there a law in your state requiring a person to rescue another from harm if it can be done safely? Should there be such a law?**

There is no law in Utah which requires a person to rescue another from harm unless that person has a required duty or responsibility to help another. For example, a lifeguard is responsible to aid a person if they are drowning. If, however, an individual makes the voluntary decision to attempt the rescue of another, the rescuer is held to a standard of reasonable care in that attempt. If the voluntary rescuer does not exercise reasonable care, the rescuer may be subject to liability.

p. 199. **Is contributory negligence a valid defense in your state? If not, when was the law changed?**

Contributory negligence, the doctrine under which an injured person is precluded from any recovery if negligent in any degree, is no longer a valid defense in Utah. Utah's comparative negligence statute was enacted in 1973.

p. 201. **Do you have comparative negligence for a defense in your state? How are damages apportioned if more than one person has been negligent?**

Utah law encompasses a system of comparative negligence. Under that system, an injured party may recover from a negligent defendant only if the injured party's negligence is less than the negligence of the defendant. If the injured party is 50% or more responsible for the injury, there is no recovery. If the injured party is less than 50% responsible for the injury, any recovery will be reduced by the injured party's percentage of negligence. For example, if an injured party is 40% responsible for an injury and the jury awards

$10,000 to the injured party, that award is automatically reduced by 40% or $4,000. The injured party would receive $6,000.

All defendants are responsible for their own percentage of fault. In Utah, there is no contribution among joint tortfeasors, a system in which an injured party could recover all damages from one of multiple defendants if the one defendant was responsible in any degree for the plaintiff's injury. The single defendant would then pursue the other defendants for recovery of the other defendants' portion of damages. That system of contribution was abolished in 1986.

p. 203. **Can a minor child sue a parent in your state? Can spouses sue each other for torts? Should any of these laws be changed in your state? If so, how?**

A minor child may sue a parent on a tort claim in Utah. Likewise, one spouse may sue another spouse on a tort claim. Insurance companies may limit, by way of "household exclusions" in liability policies, the ability of residents of the same household to sue one another. Household exclusions in automobile liability policies are unenforceable, at least up to the $25,000 minimum requirements of the law.

If you believe that these laws should be changed, contact your state legislature to see what actions you could take.

p. 208. **Does your state have strict liability laws covering harm caused by defective products? Can the consumer use strict liability to sue everyone from the manufacturer to the seller of the product? Is this fair?**

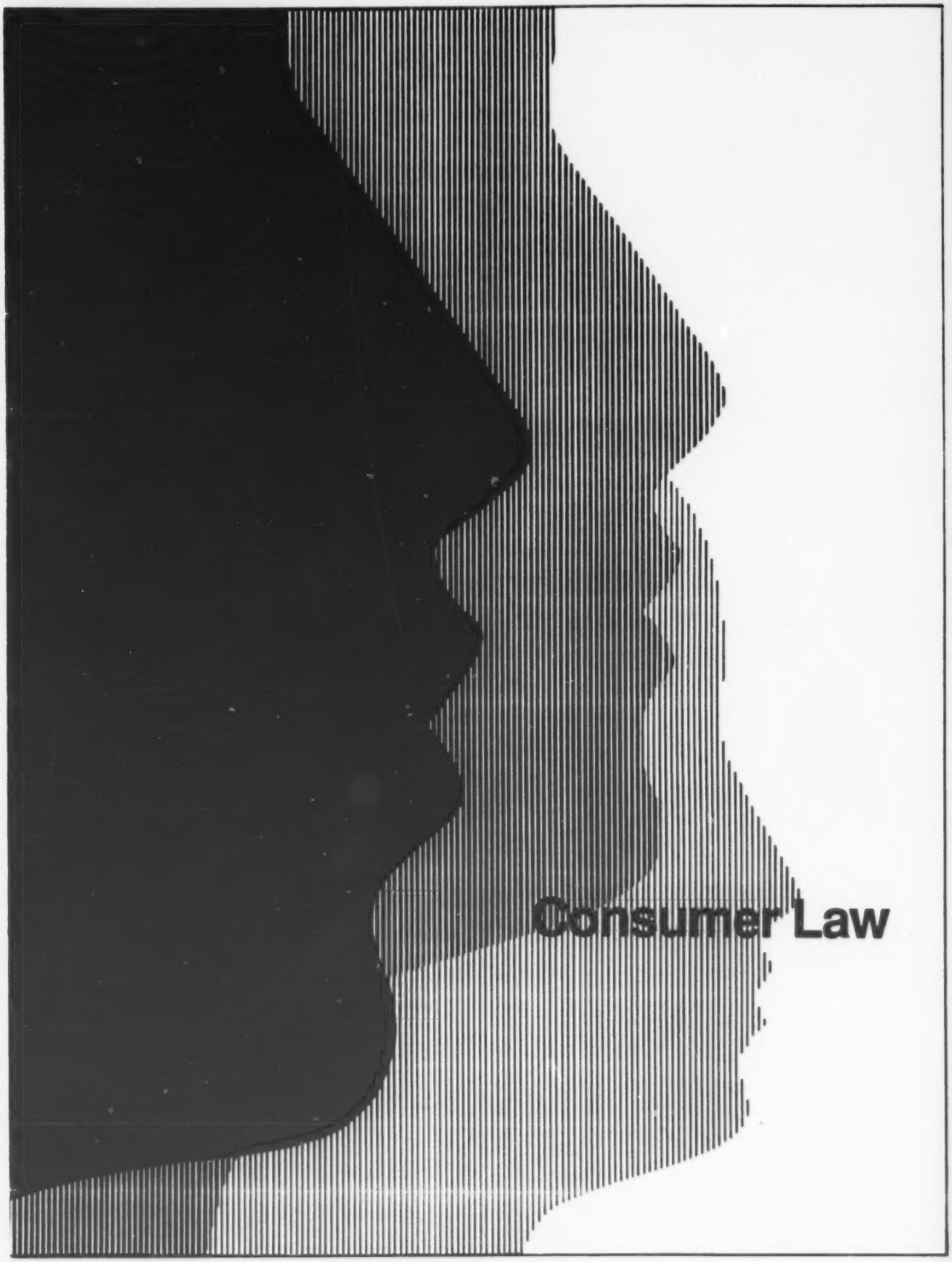
Strict liability is liability without fault. Utah has adopted the doctrine of strict products liability. Under that doctrine, the manufacturer of a product is strictly liable for injuries caused by products deemed "in a defective condition unreasonably dangerous to the ultimate user or consumer." If a product is defective under that definition, the manufacturer, and others in the chain of distribution, are strictly liable for any damage caused by the product, regardless of the care exercised in the design or manufacture of the product. The product must reach the consumer without substantial change in the condition in which it was manufactured. Misuse of the product by an injured party is a defense to a strict products liability claim.

p. 212. **What tort reform issues are being considered in your state? Has your state legislature passed any laws in recent years that deal with medical malpractice?**

The Utah legislature has enacted caps on non-economic damages (pain and suffering) in medical malpractice claims and claims against governmental entities. These caps are challenged on constitutional grounds. The medical malpractice cap has been struck down as unconstitutional.

The Utah Legislature requires a statutory process to evaluate medical malpractice claims before any complaint may be filed. A three-member panel consisting of a medical representative, a lawyer, and a citizen review claims to determine if the claim is meritorious. The decision of the panel is not binding, nor is the decision admissible in later litigation. The system is designed to evaluate claims and assist in early resolution of claims.

For information on tort reform issues call the Salt Lake Community Council at 535-7917.


Consumer Law

CHAPTER FOUR

CONSUMER LAW*

I. INTRODUCTION

Consumer law directly affects everyone. This chapter addresses various aspects of consumer law unique to Utah. It identifies public agencies and service organizations that can assist consumers in resolving problems. Utah has enacted laws to protect consumers from fraud, deception, defective products and defective repairs; these laws will be discussed in this chapter. Additionally, this chapter confronts important issues regarding insurance, contracts, consumer credit, credit card use and creditors' rights when a consumer breaks a contract or fails to pay his bills.

This chapter has an Appendix of Organizations to Know that may be helpful in resolving grievances or obtaining answers to questions. Also, this chapter has questions and answers that might be of assistance in learning different aspects of consumer law in Utah.

We all try to spend our money intelligently. After all, few of us have limitless supplies of it. Since the Street Law text was first published, countless new products and services have been developed and marketed to us in revolutionary ways. Who could have imagined ten years ago that we could make purchases directly from the screen of a personal computer? On a less positive note, a decade ago none of us had yet received an automated telemarketing call.

II. WHERE CONSUMERS CAN HAVE THEIR COMPLAINTS HEARD

Utah's Department of Commerce has several agencies which can come to the assistance of consumers.

A. Consumer Protection Division (General Consumer Problems)

The Consumer Protection Division is both a valuable source of information which can help consumers avoid problems and a resource to aid in the resolution of disputes which have not been successfully settled informally. The Appendix contains information about how to contact the Consumer Protection Division.

The Division evaluates written complaints from consumers. If it decides that the complaint may be justified, it contacts the business in an attempt to work out a solution. For example, if a consumer has not received merchandise ordered from an out-of-state mail order company, the Division contacts the out-of-state seller

*This chapter was originally written by Dorothy C. Plesche of the law firm Callister, Duncan and Nebeker and Ron Nehring of the law firm Prince, Yeates and Geldzahler. It was updated for this edition by Ron Nehring.

or asks the attorney general of the state in which the seller conducts business to investigate the matter and intervene on the complainant's behalf. If the Division determines a lawsuit is necessary to resolve the problem, it refers the case to the Attorney General of the State of Utah.

B. Division of Public Utilities (Utility Problems)

The Utah Division of Public Utilities is also an agency within the Department of Commerce (See Appendix). It has the responsibility to regulate utility services to residential customers. Utility problems typically concern deposits, billing and termination of service for failure to pay a bill.

A deposit may be required before commencing utility service. The maximum deposit is the sum of the highest potential two-month utility bill. A deposit may be paid in three monthly installments, with the first payment due at the time of application for service. The customer earns interest on the deposit as long as it is held.

If a dispute arises over a bill, a consumer may withhold payment of the disputed amount, but must contact the Division and continue to pay undisputed bills. Upon receiving a written complaint, the Division will attempt to mediate the problem between the person making the complaint and the utility. If the complainant is not satisfied with the mediation attempts of the Division, a consumer may request a formal hearing before the Division. All hearings are public and the Division's decisions are appealable to the Utah State Court of Appeals.

Because gas bills fluctuate widely throughout the year, consumers have the right to elect to spread payments over twelve months as part of a "budget billing" system. This program may also be available for electric bills.

If a consumer encounters difficulty in paying a utility bill, he should contact the utility and ask about a deferred payment agreement. This agreement will permit the user to make up delinquent payments over an extended period, up to one year. Prior to termination of service, the utility company must give a consumer at least ten days notice of its intent to disconnect the service.

When renting an apartment, a tenant should learn in detail the terms for paying for utility service. If the landlord states that the tenant is to pay for "lights," the tenant should discover whether this includes an electric water heater, or electric heat, both of which could increase the electric bill substantially.

Several Utah cities and towns own utilities. They are not regulated by the Division. Municipally owned utilities are not bound to comply with the specific rights outlined above. However, because the United States Supreme Court has determined that people

have a constitutionally protected right to continue utility service, most of these procedures must be observed before a consumer can be deprived of service.

Finally, over the past several years, Congress has appropriated money to assist low income persons with utility bills. While the future of similar programs is uncertain, consumers who need help should ask the utility or local legal services office about low income energy assistance.

C. Division of Securities (Investment Problems)

If a citizen has a problem with the purchase of stock, he may file a complaint with the Division of Securities. Usually complaints filed with the Division involve the nondelivery of stock or subscription certificates or the suspicion of fraud. If legal action appears necessary, the Division will refer the complaint to the Utah Attorney General's office.

Utah has the dubious distinction of being one of the nation's leaders in investment scams. Investment decisions demand the exercise of great caution and considerable discipline when faced with the lure of easy money or "valuable prizes". If you are tempted by an investment opportunity, contact the Division. They can provide you with advice and pamphlets about how to evaluate the benefits and risks of the investment.

D. Division of Occupational and Professional Licensing (Problems with Various Trades and Professions)

Doctors, electricians, acupuncturists and members of more than forty other occupations must be licensed by the Division of Occupational and Professional Licensing. This Division handles complaints ranging from fraud, drug use, and sexual misconduct to shoddy roofing jobs. While a member of a licensed occupation may be disciplined by the Division for wrongdoing, the victim of the licensee's slipshod or unethical work is not likely to recover money as a result of Division action and must go to court to obtain this remedy.

E. Attorney General (The State's Lawyer)

The Attorney General's office investigates consumer complaints made through the major state agencies. However, it is usually more practical for a citizen with a complaint to contact the Division of Consumer Protection first rather than to contact the Attorney General's office directly. If the Division of Consumer Protection is unable to help, it will direct the complainant to the proper agency.

F. Small Claims Court

Small claims courts are located throughout the State of Utah. If someone has a problem which involves no more than $5,000 he can file a complaint with the clerk of the small claims court. There is a nominal filing fee not exceeding $40.00, depending on the amount of the claim. No special expertise is needed to present a case in small claims court, and persons typically represent themselves, although lawyers are not excluded. Both sides tell their story to the trial judge. To make the court more accessible, lawyers donate their time to serve as judges in the evenings.

G. Better Business Bureau

The local chapter of the Better Business Bureau is a business organization that encourages fair business and consumer practices and "polices" business. It is a source of valuable information and can be used as an effective purchasing guide.

III. UTAH CONSUMER SALES PRACTICES ACT

Deceptive sales practices which have proven to be the greatest problems for Utah consumers, including door-to-door sales, phony contests, bait and switch sales and referral schemes, are discussed in the Street Law text. One important omission from its survey of deceptive practices, however, is the "pyramid scheme." The most widely known pyramid scheme is the chain letter. Today, pyramid schemes are far more sophisticated than a chain letter, but they are still bad deals. Pyramid schemes are common in Utah. In a typical pyramid scheme, a promoter will offer an opportunity to buy or "invest" in a dealership or business. Once a person signs up as a dealer, he acquires the right to sell dealerships or investment shares to others. Sometimes, a dealer may have an actual product to sell, apart from the dealerships or investment shares; sometimes not. Sound phony? It should. The pyramid scheme produces nothing and provides no useful service to anyone. It is a fundamental principle and policy of the state and national economy that private enterprises should be productive, if not socially beneficial. The pyramid scheme is thus an unwelcome intruder in our economic system. The Utah Consumer Sales Practices Act makes pyramid schemes unlawful.

IV. OTHER FREQUENT SOURCES OF CONSUMER MISERY AND HOW TO AVOID THEM

A. Repair and Estimate Fraud

In Utah, consumers are entitled to a written estimate of charges for repairs which exceed $25.00. A merchant or mechanic need not volunteer the estimate; instead, the consumer must request

it. Once a written estimate is obtained, the consumer must authorize any additional charges which exceed ten per cent of the estimate. If an estimate was given orally, the business is not required to contact the consumer to authorize additional charges even if they exceed ten per cent of the original estimate.

B. Automobile Repairs

Automobile repair problems are a major source of consumer distress. Twenty-five percent of the complaints received by the Consumer Protection Division relate to auto repairs. As the Street Law textbook correctly observes, the repair shop or garage can place a lien on a consumer's automobile, traditionally permitting a repairman to keep the automobile until the consumer agrees to pay the repair charges. Because a working automobile is a necessity for most people, the mechanic's lien is a potent weapon which is sometimes used by mechanics to compel consumers to pay for unwanted, defective or unnecessary repairs.

When faced with a repair bill which a consumer is unable or unwilling to pay because the mechanic demands payment for unauthorized or defective work, a consumer may have his car released to him by posting a bond. The mechanic may then sue to collect the amount of the repair bill, but in the meantime, the consumer has possession of the car. The court clerk or Division of Consumer Protection has details about how properly to post a bond.

Another method of dealing with garages and mechanics is available to consumers who are able to charge the repair to a lender credit card (Visa or Mastercard). When a consumer makes a purchase using a lender card, the merchant notifies the financial institution which issued the card of the purchase. The merchant is then paid and the financial institution charges the consumer's account. By using the lender credit card to pay for auto repairs, the owner is able to take possession of his car. If the work proved to be defective or the charges excessive, the owner must make a good faith effort to resolve the dispute with the mechanic. The car owner may wish to discuss the problem with the mechanic directly, but should always document the complaint in a letter to that repairman. If the attempts to solve the problem fail, the owner should send the financial institution (bank, etc.) a copy of the credit card receipt together with an explanation of the problem and attempts to resolve it. The Fair Credit Billing Act requires that the financial institution remove the charge from the bill until the dispute is resolved.

C. Lemon Law

Consumers occasionally buy or lease a new car or motor home with major defects that can't be repaired: a "Lemon". These consumers can obtain relief under the New Motor Vehicle Warranties Act or "Lemon Law." The Lemon Law applies to new vehicles which

are under warranty and which were bought in Utah. A vehicle qualifies as a "lemon" if its defects are so substantial that they have defied repair on at least four occasions or have resulted in putting the vehicle out of service for at least 30 days. A consumer is also required to pursue any dispute resolution procedure the manufacturer may have established.

If you have a "lemon," you must file a complaint with the Division of Consumer Protection. If you have a vehicle which you fear may qualify as a "lemon," you should contact the Division as soon as possible to obtain advice on how to properly protect yourself under the Lemon Law.

D. Telephone Fraud

The growth of telemarketing has spawned an explosion of telephone fraud. Estimates of the amount of money fraudulently siphoned through telephone receivers each year run as high as $40 billion. Utah has a Telephone Fraud Prevention Act which attempts to keep telemarketing abuse in check, but the primary responsibility for disconnecting your telephone from your wallet is yours. Several tips are useful. Never invest with a stranger over the phone. Respond to high-pressure tactics by hanging up. Ask if you have the right to cancel your purchase after you order. Obtain the name, address and phone number of the solicitor's company. Be very wary of giving your credit card number over the phone.

E. Insurance

The insurance industry is one of the largest and most powerful institutions in America. In Utah, an estimated ten per cent of personal income is spent on insurance. Unfortunately, too few people are able to solve basic mysteries of insurance: What kind of insurance is best? How much is needed? What is a good price?

Because the features of policies vary so widely, even within a specific type of coverage, such as life insurance or automobile insurance, a consumer's ability to comparison shop is difficult.

The Utah Insurance Commissioner regulates the insurance industry in Utah. If an insured has a complaint about the practices of an insurance company or agent, she should contact the Insurance Commission.

F. "Rent-to-Buy" Plans

A rent-to-buy plan offers a consumer an opportunity to own merchandise, usually a television set or appliance, if he or she "rents" the merchandise for a specified period. Because the rent-to-buy agreement generally states that the merchant and consumer are entering into a series of renewable rental agreements which may be ended at any time by the consumer without further obligation,

the merchant does not disclose the total cost of the television or appliance. That cost is usually substantial. For example, the interest rate charged could often exceed sixty per cent. Rent-to-buy plans are not illegal in Utah, but they are a good example of the art of hiding the true cost of merchandise from the consumer.

G. Charitable Solicitations

In 1987 the Utah Legislature passed a law which requires any group or organization that solicits "charitable" contributions first to register with and receive a permit from the Consumer Protection Division of the State. Such permits are required to be displayed by the person soliciting contributions. A potential contributor should verify the registration and learn the nature of the organization before donating any funds.

V. CONTRACTS

A. Minors and Contracts

In Utah, the age of majority is eighteen or until marriage. Until a person reaches the age of eighteen or marries, he or she may disaffirm, or refuse to honor, contracts he or she made, other than for necessities such as food, clothing and housing.

B. Unenforceable Contracts

As indicated in the Street Law text, certain contracts are called "unconscionable" or totally unfair and one-sided. Courts generally will refuse to enforce such contracts. Whether or not all or part of the contract is unconscionable depends upon the circumstances surrounding the making of the contract. It is not enough that the contract seems or even is unfair. A Utah case, Lundstrom v. Radio Corporation of America, illustrates this. In the Lundstrom case, buyers paid on the average $995.00 for color television sets that the manufacturer had suggested should sell for $695.00. The Court pointed out that no one had forced the buyers to sign the contracts. The buyers were not allowed to get out of the contract. The excessive price of the sets had nothing to do with the legality of the contract. It is, therefore, important that a buyer understands a contract and knows its terms before signing it. Just because it later does not seem fair, the buyer may and usually will be obligated under its terms.

C. Written and Oral Contracts

In Utah certain types of contracts must be in writing before they can be enforced by the courts. The purpose of this law is to prevent fraud and perjury. If the terms of a contract are written, there is less likelihood of a disagreement. Under Utah law, contracts for the sale or lease of land, contracts where someone

agrees to pay a debt for another and contracts which will not be completed within one year must be in writing. For example, if a minor purchases a car but has trouble making payments, his father may promise to make the payments if he fails to do so. Because the father would be assuming responsibility for his son's debts, his promise to pay must be in writing before it can be enforced.

VI. CONSUMER CREDIT

Borrowing money to buy goods or services for the privilege of enjoying the purchase while the consumer pays for it has become an important part of the economy. Paying cash is generally the least expensive way to make purchases, but often is not possible or practical. It is common to finance major purchases and "big ticket" items such as cars, furniture and appliances, as well as education and emergencies. Before using credit, a potential borrower should take a hard look at his reasons for borrowing money, whether he will be able to repay the loan and whether the benefits of borrowing money will offset the additional costs of credit. If he decides to make a purchase on credit, he should shop around and know all of the terms of the credit arrangement before signing anything.

A. Utah Consumer Credit Code

The Utah Consumer Credit Code (UCCC) is the law that governs consumer credit transactions in Utah. The UCCC was substantially amended in 1985 to simplify the Act. Under the UCCC, a consumer credit transaction is defined as one in which "credit [is] offered or extended by a creditor to an individual person primarily for personal, family, or household purposes." The Department of Financial Institutions of the State of Utah enforces the provisions of the UCCC.

B. Sources of Credit

Because of the competitive nature of the lending business and because many money lenders specialize in specific types of loans, it is wise to shop around for credit to determine which source will offer the best deal in terms of price, service and convenience. When looking to borrow money, a potential borrower should check with commercial banks, savings and loans, industrial loan corporations (thrift institutions), credit unions and finance companies. Also, a purchaser should check with the dealer or retail store from whom he is purchasing the goods to determine if it sells goods on credit or installment contracts and, if so, what the costs and terms of the credit arrangements are. Consumers should beware of pawnbrokers and loan sharks -- borrowing money from these lenders can be more costly than anticipated! The Department of Financial Institutions can answer questions about the reputation of lenders.

C. Disclosing Costs of Credit

Federal law requires that certain "disclosures" be made in writing by the creditor to a consumer. A consumer is entitled to receive these disclosures before the credit transaction is completed (or, in the case of open-ended credit, before the first transaction is made under the plan).

Required disclosures for a closed-end loan (a loan with a fixed amount and a fixed due date) include the amount financed, the interest rate and finance charge expressed as an annual percentage rate; the cost of credit in terms of actual dollars; the collateral, if any, required to be given as security to repay the loan; the terms of repayment (including the number, amount and due dates of payments); what charges may be imposed for a late payment; whether there are any prepayment penalties (and if so, how they are computed); how a rebate is determined if the loan is paid before it is due; and any other charges not included in the finance charge.

It is important for a consumer to ask questions to make sure he understands the disclosures, the effect of the disclosures, interest rates, and how much it actually costs to borrow money. The importance of having such an understanding is demonstrated by the following example:

If a borrower borrows $1,500 for one year at a cost of $10.00 per $100, the terms of repayment make a big difference in the interest rate the borrower is paying. If the loan is due in one payment at the end of the one-year period, the borrower would repay the sum of $1,500 plus $150; the interest rate would be a simple ten per cent. If the borrower repays the loan in twelve equal installments of $137.50, the interest rate is eighteen and one-half per cent! The actual dollar cost is still $1,650 but, because he is paying throughout the year, he does not have use of the $1,500 for the full year. In effect, the borrower has use of only about half the original amount for the full year.

D. Interest Rates

The UCCC imposes no maximum rate of interest ("usury rate") which can be charged on consumer credit transactions in Utah. Accordingly, it is advantageous to "shop around" for the best interest rate and other terms.

E. Delinquency Charges

Interest rate charges are computed by creditors on the assumption that payments will be made on time. If a borrower fails to make a payment as scheduled, the UCCC allows the creditor to impose a delinquency charge not to exceed the greater of $15 or five percent of the delinquent unpaid amount of the installment. Delinquency charges are not part of the finance charge.

F. Right to a Rebate When Loan is Prepaid

If a borrower pays off a closed-end loan before it is due, the earned finance charge and unpaid principal must be calculated by either the actuarial or United States Rule method. The buyer should receive a rebate.

G. Right to Recision

A borrower is guaranteed the right to cancel or rescind a consumer credit transaction without penalty if he put up the equity of his home to secure repayment of the money borrowed or if the sale of goods was solicited at his home or place of employment. If a borrower decides to cancel such a credit transaction, he must notify the creditor of the decision within three business days after the credit transaction was completed. The creditor must return any deposit or money paid and cancel the security agreement within ten days after notice is received. The borrower must then return any goods he received.

H. Security Interests

To ensure that borrowed money is repaid, a lender may require that a borrower put up some of his property (collateral) to secure repayment of the indebtedness. This is called a security interest. However, federal law prohibits creditors from taking a security interest in household goods other than a purchase money security interest. A purchase money security interest is like a mortgage: the borrower makes payments on a purchase and is entitled to possession of the merchandise. If the borrower defaults on a secured credit transaction, a creditor can take possession of the property in which it has a security interest. The procedures by which a creditor can take possession of such property are discussed later in the section on repossession.

I. Credit Cards

Use of credit cards and charge accounts has made borrowing money to make purchases easy and convenient. These accounts are called open-ended credit or revolving credit transactions. There are advantages to using credit cards such as record-keeping and budgeting. But there are also disadvantages -- overspending, buying impulsively and not considering the added costs of credit on purchases. To avoid the pitfalls of over extending credit, a consumer should limit the number of credit cards he has and uses.

Because individuals under eighteen years of age in Utah can avoid or disaffirm contracts, creditors will generally not accept applications from minors unless an adult co-signs and agrees to be responsible for the indebtedness incurred by use of the card. It is possible, however, to have a card issued in a minor's individual name, as long as an adult has co-signed the application.

Revolving credit cards are offered by retail stores. The retail stores extend credit to the consumer for purchases made at the store. A buyer should know what the costs of credit are before using these cards or she could unwittingly pay an extremely high interest rate on purchases, which is hardly a bargain in the long run.

Federal law requires certain disclosures to help borrowers understand the costs of credit and terms of repayment. The conditions under which interest and finance charges may be imposed, the interest rate charged and the minimum payments required must be disclosed in writing. Periodic billing statements will tell how the amount of the finance charge is determined, how long the borrower can postpone paying without having to pay a finance charge, and the minimum periodic payment (usually monthly) required. Other information contained on monthly statements includes the previous balance on the account, the date and amount of each purchase, a recognizable description of each item charged, credits for returns, other adjustments and the amount of the finance charge for the month.

An address to which a borrower can write if he disagrees with a billing must be set forth in the periodic billing statement. If he disagrees with the periodic statement, he has 60 days from the date of the statement within which to write and advise the creditor of the reasons believed to be in error. The creditor must acknowledge a billing error inquiry within 30 days and resolve the dispute within two billing cycles, but not more than 90 days. As long as the dispute is not resolved, the borrower need not make any payments on amounts in dispute. The creditor may not collect any disputed amounts or any finance charges on those amounts. Until a creditor complies with the error resolution procedures, the account cannot be closed because of the dispute, nor can a creditor adversely report on credit standing because a borrower failed to pay an amount believed to be in error. If a creditor does not follow the procedure required, the creditor must forfeit the disputed amount, up to $50, regardless of whether or not an error was made.

Federal law protects borrowers from illegal use of credit cards. The borrower is liable for a maximum of $50 in losses in the case of unauthorized use of any credit card which has been stolen.

J. <u>What To Do If Denied Credit</u>

The Federal Equal Credit Opportunity Act contains provisions requiring equality in granting or denying credit applications, and prohibiting discrimination on the basis of gender or marital status of any applicant. Lenders are also prohibited from discriminating in granting credit on the basis of age, race, color, religion, national origin or because the applicant has in good faith exercised

any right under the Federal Consumer Credit Protection Act. Credit may not be denied solely for the reason that the applicant is on welfare.

The creditor must give reason for denying credit. When a credit report is involved, the borrower can make inquiry as to the information contained in the file and request an investigation to determine if that information is complete, accurate, and not misleading. If an error is made, the credit bureau must correct the error. If the dispute is not resolved, the borrower can submit a written statement to the credit bureau reporting his side of the story which will become part of the permanent credit record. If someone believes there is an error, or misleading or inaccurate information in his report which has not been corrected, he may direct a complaint to the Federal Trade Commission or the Federal Reserve Board.

K. Credit Insurance

Credit insurance is a type of insurance of considerable cost and questionable value which is sold in connection with loans and credit sales. Credit life insurance will pay off a loan if the borrower dies. Credit accident and disability insurance will make credit payments if a borrower is sick or disabled for an extended period. In 1988, eighty per cent of the loans made to consumers in Utah included the sale of credit insurance. Although such insurance is optional, in most cases, the borrowers were not adequately informed and did not know that they were purchasing the insurance.

VII. DEFAULT AND COLLECTION PRACTICES

If a borrower fails to make payments or keep other promises he made in a credit transaction, creditors have certain remedies available to them to collect the indebtedness.

A. Harassment

As under the federal law, Utah law restricts the practices of debt collectors. While the federal Fair Debt Collection Act regulates the conduct of only "third-party" collectors, (typically collection agencies which are hired by merchants to collect their bills), Utah's Consumer Sales Practices Act prohibits deceptive collection practices by anyone who attempts to collect bills from consumers.

Collection agencies cannot call at night, call neighbors, employers or places of employment, or threaten to sue and ruin credit ratings. It is common for debt collectors to threaten to garnish a consumer's wages. While garnishment is available to a creditor, it can only occur after the creditor has obtained a court

judgment that the debt is owed. A borrower may not go to jail under any circumstances for failing to pay a debt. It is unlawful for a bill collector to threaten criminal prosecution to collect a debt.

If a debtor is subjected to threatening calls and letters from collectors or otherwise is being harassed, he can contact the Consumer Protection Division for assistance.

B. Repossession

If a buyer puts up goods as security (collateral) for repayment of a debt and defaults on his obligations, a creditor has the right to repossess the collateral without first going to court to get permission. This is called "self-help." In taking possession of the goods, a creditor cannot "breach the peace." Repossession on public streets is generally permissible, but where a creditor would have to enter private property without consent or uses threats, intimidation, force or any action which is likely to produce violence, there is a breach of peace and the creditor cannot repossess the goods without first obtaining a court order. For example, a person borrows money from a bank to purchase a car and gives the bank a security interest in the car. After two years of making timely payments, he loses his job and is unable to make payments on the loan. After the debtor unsuccessfully attempts to revise the loan terms, the bank decides to repossess the car. The debtor keeps the car in his locked garage. Representatives of the bank come to his home and demand that he unlock his garage and let them take the car, threatening to break the door down if he refuses. He nevertheless refuses. Under the law the bank cannot break in and take the car because it would involve a breach of the peace.

If a creditor cannot repossess the collateral without breaching the peace, the creditor must go to court and file a legal action. The creditor can sue either exclusively on the debt without regard to the collateral or can bring an action to recover the collateral. In an action to recover possession of the collateral, the debtor must be given an opportunity to come into court and tell his side of the story before the goods can be repossessed, unless the creditor can show it will be irreparably injured, i.e., the debtor is hiding the collateral or is in the process of selling it.

After repossessing the goods, the creditor may dispose of the collateral at a public or private sale so long as the sale is "commercially reasonable" in terms of manner, time, place and purchase price. The debtor must receive notice of the sale and be given an opportunity to pay the indebtedness and take possession of the collateral.

Under the UCCC, if the buyer obtains goods on credit for $3,000 or less and the goods are repossessed by the lender, the buyer cannot be held personally responsible for more than the creditor gets from the sale of the goods unless there has been substantial damage to the goods while in the buyer's possession. The creditor is required to accept the repossessed goods as full payment of the indebtedness. If the buyer paid more than $3,000 for the goods, he may be responsible for any amount above the sum received by the creditor at a sale up to the extent of the indebtedness, which includes the creditor's costs of repossession and preparation for the sale. For example, a person buys furniture for $5,000 financed by Woods Furnishings. He makes six payments of $200 each but then is unable to make further payments. Woods Furnishings repossesses the furniture and sells it for $3,500 (which is considered a fair price). Because the purchase price was more than $3,000, the buyer would still owe the furniture store $300 plus accrued finance charges and costs of repossession and sale -- that is, $5,000 plus accrued finance charges and costs, less $1,200 in payments, less $3,500 received as a result of the sale. These guidelines apply even if the buyer voluntarily surrenders the goods to the creditor, although in such a case he will not be responsible for costs of repossession.

C. Garnishment

A creditor may collect money owed by the debtor (if he has defaulted) by filing a lawsuit, obtaining a judgment and then asking the court to issue an order directing the employer to withhold a certain amount of money from the debtor's paycheck each payday until the debt is paid. Because the debtor must be allowed to pay certain expenses, including those for necessities, a Utah court cannot order more than twenty-five per cent of a paycheck to be given to a creditor. The twenty-five percent is calculated after all deductions are made, i.e., taxes, social security, retirement.

An employer cannot fire a person simply because his wages are subject to garnishment, and a garnishment can be made only by court order.

VIII. MARRIAGE AND DIVORCE: THEIR EFFECT ON THE CONSUMER

Because most people rely upon credit to make at least some purchases, especially those which arise in an emergency, it is important to establish a good credit history. Too often, married women neglect to do this, relying instead on their husbands to take responsibility for credit purchases.

A decree of divorce usually assigns responsibility for payment of debts accumulated during the marriage. These marital debt provisions do not relieve either party of his or her duty to pay a

creditor. This means that even if a husband is ordered to pay marital debts in the divorce decree, a creditor may look to the ex-wife for payment. The only recourse for an ex-wife who is confronted with this problem is to sue her ex-husband.

IX. AUTOMOBILE REGISTRATION AND INSURANCE

To register a vehicle and obtain a certificate of title, a person must make application with the Department of Motor Vehicles. The filing fee is $24.50. All sales and property taxes on the vehicle must have been paid and as of January 1, 1988, the owner must provide a certificate of safety inspection and emissions compliance. He also must have insurance coverage which meets the minimum requirements of the Utah No-Fault Insurance law or provide a bond. The registration card issued by the Department of Motor Vehicles must be carried in the car at all times.

No-fault laws allow settlement of a claim without determining which party is at fault. No-fault benefits are limited to $3,000 per person for medical expenses, disability benefits of eighty-five per cent of lost income up to $250 per week for a maximum of 52 consecutive weeks, funeral expenses in the amount of $1,500 per person and $3,000 in death benefits. These benefits apply only to personal injuries. In 1985, Utah adopted the Financial Responsibility Act to enforce insurance coverage for Utah drivers. Under this Act all motor vehicle operations must have liability insurance in the sum of at least $40,000 for any one accident or post bonds to assure such minimum coverage. Failure to maintain insurance or post a bond will result in loss of the driver's license.

APPENDIX

ORGANIZATIONS TO KNOW -- CHAPTER FOUR

Utah State Government:

Automobile Sales and Recreational Vehicles
Motor Vehicles Division
(State Fairgrounds)
1095 Motor Avenue
Salt Lake City, Utah 84111
Phone: 538-8300

Contracting
300 South 160 East
Salt Lake City, Utah 84111
Mailing Address:
P. O. Box 456804
Salt Lake City, Utah 84145
Phone: 530-6514

Department of Business Regulations
Consumer Protection Division
P. O. Box 45804
Salt Lake City, Utah 84145-0804
Phone: 530-6601

Division of Public Utilities
300 South 160 East
Salt Lake City, Utah 84111
Mailing Address:
P. O. Box 45801
Salt Lake City, Utah 84145-0801

Food and Consumer Services
350 North Redwood Road
Salt Lake City, Utah 84116
Phone: 538-7124

Insurance Department
Room 3110 State Office Building
Salt Lake City, Utah 84114
Phone: 538-3800

Real Estate Division
300 South 160 East
Salt Lake City, Utah 84111
Mailing Address:
P. O. Box 45806
Salt Lake City, Utah 84145-0806
Phone: 530-6747

Securities Division
300 South 160 East
Salt Lake City, Utah 84111
Mailing Address
P. O. Box 45808
Salt Lake City, Utah 84145-0808

Small Claims Court
(Third Circuit Court)
451 South 200 East
Salt Lake City, Utah 84111
Phone: 533-3914

Substance Abuse
(Utah Social Services Department)
120 North 200 West
Salt Lake City, Utah 84103
Phone: 538-3939

Weights and Measures Division
350 North Redwood Road
Salt Lake City, Utah 84116
Phone: 538-7159

Other Agencies:

Better Business Bureau
1588 South Main Street
Salt Lake City, Utah 84115
Phone: 487-4656

385 24th Street
Ogden, Utah 84401
Phone: 399-4701

Provo, Utah Phone: 377-2611

Consumer Credit Counseling Services
845 East 4800 South
Murray, Utah 84117
Phone: 266-0064

T.R.W. Credit Data
295 Jimmy Doolittle Road
Salt Lake City, Utah 84116
Phone: 355-5904

CHAPTER FOUR

CONSUMER LAW

"Where You Live" Questions and Answers

p. 220. **Has your city or county passed any consumer protection laws giving you greater protection than you already had under state and federal laws? If so, what do these laws cover? How are they enforced?**

Salt Lake City and Salt Lake County, like most cities and counties in Utah, have enacted ordinances dealing with issues such as business licenses and regulations; food and alcoholic beverage control; animals; vehicles and traffic; public peace, morals, and welfare; parks and recreation; streets, sidewalks, and public places; zoning; flood control; and buildings and construction, including the adoption of the Uniform Building Code.

While many of these ordinances affect and assist consumers, it does not appear that there is an ordinance specifically directed to consumer protection.

p. 229. **Does your community have a consumer mediation program? Does it have a Better Business Bureau? A media "action line"? If so, what do each of these programs do?**

Utah has a Better Business Bureau with offices located in Salt Lake City, Ogden, and Provo. The Better Business Bureau provides information concerning the business community locally and out-of-state. It also assists with complaints concerning local businesses, mail orders, and magazine subscriptions. The Better Business Bureau is open from 8:30 a.m. - 5:00 p.m. (phone service from 9:00 a.m. - 4:00 p.m.) and does not charge a fee.

p. 236. **Is there a small claims court in your community? If so, where is it located? What is the filing fee? What is the largest amount of money that can be awarded? Are lawyers permitted in this court?**

Small claims courts are located throughout Utah in circuit courts and county and municipal courts. In the Salt Lake City area, it is located at 451 South 200 East (Third Circuit Court - phone 533-3914) and evening sessions are held every Tuesday, Wednesday, and Thursday.

The filing fee is under $40.00. There is also a service and mileage fee for having the subpoena served upon the defendant. The largest amount of money that can be awarded is $5,000.00. Lawyers are not barred from small claims court; however, they

are seldom used. Most individuals represent themselves to reduce costs and solve their problems quickly and economically.

Judges in small claims court may be local attorneys who have volunteered to serve as "Pro Tem" judges. The plaintiff tells his or her story to the judge and presents any evidence supporting the claim. The defendant has the opportunity to ask questions and argue his/her side of the story. The judge will make a ruling at the close of the trial.

p. 250. **Is there a repair and estimate law in your community? If so, how does it work?**

In Utah, consumers are entitled to a written estimate of charges for repairs which exceed $25.00. Such an estimate must be requested by the consumer, rather than being given automatically by the merchant or mechanic. Once a written estimate is obtained, the consumer must authorize any additional charges which exceed ten percent of the estimate. If only an oral agreement is given, the business is not required to contact the consumer to authorize additional charges which exceed ten percent of the estimate.

p. 279. **What agencies and organizations in your community provide financial counseling services? Do they charge a fee for their services?**

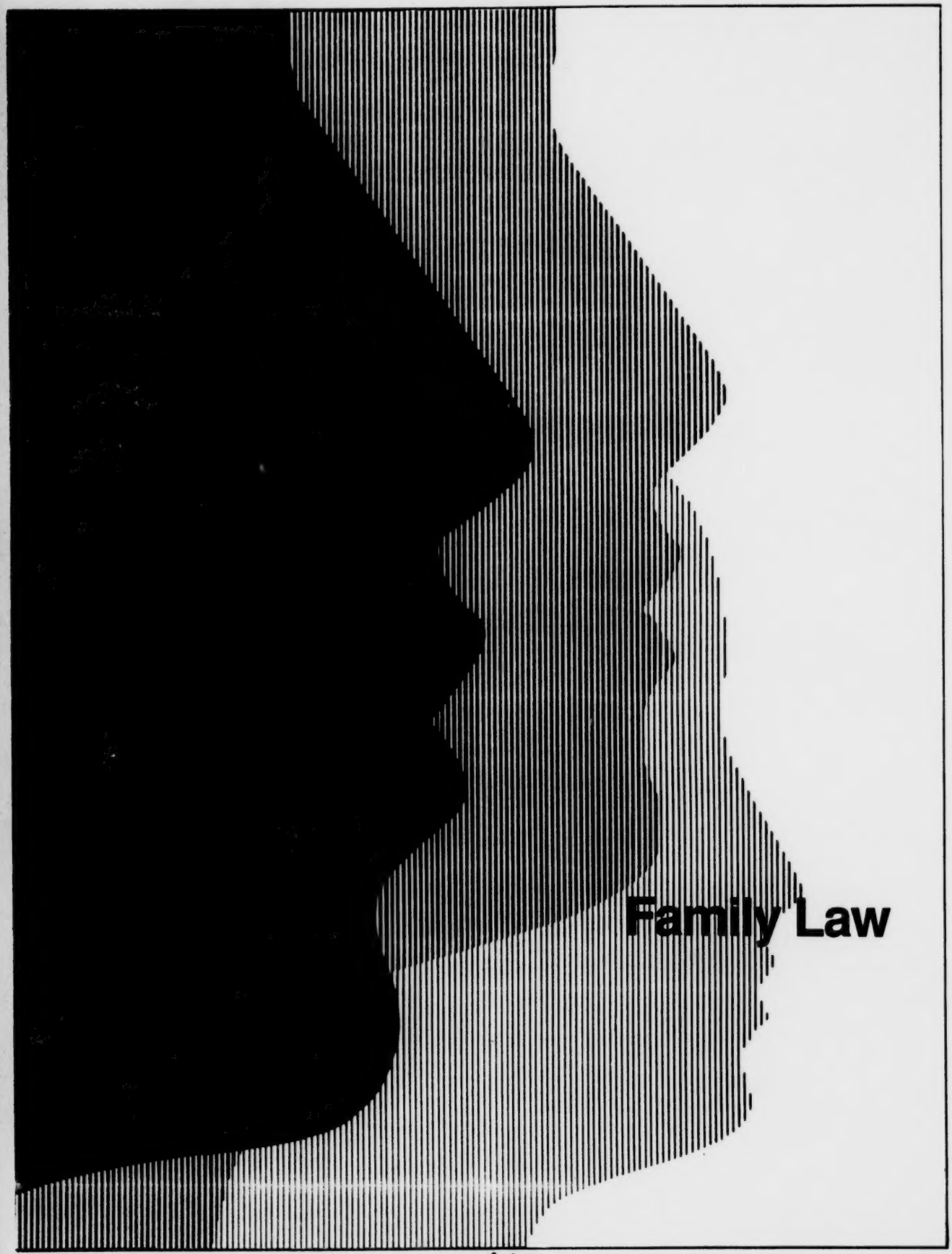
Numerous private agencies are listed in the Yellow Pages under "Financial Planning Consultants" and "Financing Consultants." Fees are charged by these agencies. Several non-profit agencies are listed under "Debt Adjuster." In the Salt Lake area, Community Consumer Credit Counseling Services of Utah offers services ranging from no fee in hardship cases to a minimal monthly fee. In Ogden, the Family Financial Counseling Center offers similar services. See Appendix for addresses and phone numbers.

p. 282. **When buying a car in your community, what procedures must you follow to register the car and obtain license plates?**

To register a car, van, or motorcycle and obtain a certificate of title in Utah, one must make application with the Department of Motor Vehicles which is open from 8-5 Monday through Friday. When applying for vehicle registration one must present proof of a safety inspection, insurance, and an emissions certificate. There is a fee of $24.50 and all sales and property taxes on the vehicle must be paid. License plates will thereafter be issued.

p. 284. **Are there laws in your state requiring that used cars be sold with some warranty protection?**

Utah has no laws requiring that used cars be sold with warranty protection. In fact, most used cars are sold with the terms "as is" on the sticker. That term excludes certain warranties under the Uniform Commercial Code, which has been adopted in Utah.


Family Law

CHAPTER FIVE

FAMILY LAW*

I. INTRODUCTION

Family Law influences everyone at some point. Issues relating to the family extend from the time one is born to the time one dies. This chapter provides an overview of family law in Utah. It covers topics relating to marriage, such as the legal requirements for getting married and ending marriage. It also discusses issues relating to divorce, such as custody of children, child support, alimony and property division. The rights and duties of parents and children are reviewed, including the age of majority, education, support and child abuse.

This chapter also has an Appendix of Organizations to Know that provides names and addresses for easy reference to helpful organizations in Utah. The last section of this chapter is a question and answer section that may be of assistance in answering questions about family law.

II. GETTING MARRIED

A. Formal (Ceremonial) Marriage

In Utah both males and females may marry at the age of eighteen without the consent of their parents. With parental consent the minimum legal age for marriage is sixteen. A person under sixteen years of age may marry if he or she obtains the approval of the Juvenile Court, a licensed physician issues a certificate of pregnancy to the county clerk, the parents consent to the marriage, the individuals marrying are at least fourteen years old, and the Court has determined that the minor is voluntarily entering into the marriage.

Unlike some states, Utah requires no waiting period before a marriage license may be issued. If one or both of the applicants are under 16 years of age, the clerk shall present them with a standard form petition to secure the required determination from the Juvenile Court. If the marrying couple satisfies the age, residency and other requirements, the county clerk may issue a marriage license on the same day the application is made. However, the license is valid for only thirty days. If the couple fails to marry within this period, they must apply for a new license.

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*This chapter was originally written by David S. Dolowitz of the law firm Cohne, Rappaport and Segal and Ronald W. Eubanks, attorney at law. It was edited for the third and fourth editions by David S. Dolowitz.

A marriage ceremony may be performed by a Rabbi, minister or priest of any church (including bishops or other designated authorities of the Church of Jesus Christ of Latter-Day Saints), a justice of the peace, mayor, judge or county clerk.

B. Common Law Marriage

A common law or informal marriage is one not solemnized in the ordinary way and is created by (1) an understanding between the parties who are legally able to agree and legally able to enter into a marriage to live together as man and wife, (2) their actual living together as man and wife, (3) mutually assuming marital rights, duties and obligations, and (4) holding themselves out as man and wife.

III. ENDING MARRIAGE

A. Ending Void and Voidable Marriages

Utah does not recognize marriages (1) involving incest; (2) where one party has a living, undivorced spouse; (3) where an unauthorized person performed the ceremony (except in situations where the parties honestly believed that proper authority existed); or (4) where one party's divorce to a previous spouse has not become final at the time of the second marriage. A marriage involving one of the above elements is void and without legal force or effect. In other words, the law treats the couple as though they were never married. If this does occur a court has the power to divide property, award support and make appropriate orders respecting their children.

Marriages induced by fraud or coercion or which involve persons who are under age or physically or mentally incapacitated are voidable under Utah law. That is, this type of marriage is considered valid unless one or both parties ask the court to annul it. Once the marriage is annulled, the law considers it never to have existed. Courts generally will not annul a voidable marriage if children are born or conceived during the marriage. Rather than annulling the marriage, the courts will most often end the marriage by a divorce proceeding as though the marriage was valid.

B. Divorce

A divorce is a court decree terminating a marriage. A Utah resident may obtain a divorce on any of the following grounds (1) impotence on the part of a spouse at the time of the marriage; (2) adultery by a spouse during the marriage; (3) willful desertion by a spouse for more than one year; (4) failure of a spouse to provide the other with the common necessities of life; (5) habitual drunkenness of a spouse; (6) conviction of a spouse of a felony; (7) cruel treatment of one spouse by the other to the extent of

bodily injury or great mental distress; (8) living three years without cohabitation under a decree of separate maintenance; (9) permanent insanity of a spouse; and (10) irreconcilable differences.

The grounds for the divorce do not impact on the division of property, the award of custody of the children or the award of support. These are all examined by the court separately from the grounds, whether there is "fault" or "no fault."

In order to obtain a divorce in Utah, one of the parties must have been an actual resident of the county where the action is filed for three months prior to the date the action is brought.

Utah courts will not usually conduct a divorce hearing or trial until at least three months after the complaint for divorce has been filed. This can be waived where there is an emergency requiring termination earlier than three months, but this is a separate decision which the court must make prior to considering the divorce itself. Evidence is taken on the issues described in the complaint at the time of trial. Sometimes the parties will have agreed on the property division before the hearing takes place. If the court feels that the agreement is fair to all parties involved, including children of the marriage, a decree of divorce will be granted based upon the terms of the parties' agreement. If the parties seeking divorce are unable to reach an agreement, the court will conduct a trial and the parties will present evidence to support their positions. The court then decides the issues of child custody, property division, child support payments and alimony. Utah, like all other states, has adopted child support guidelines which will govern the amount of child support based on the incomes of both parents. The court's decision with respect to these matters is included in the decree of divorce, which becomes final when it is signed by the judge, unless the court extends the time in which it will become final. If this is done, the extension can be for up to six months.

The period between the time the divorce decree is signed and the time it becomes final is called the "interlocutory period." If the couple reunites during this period, the divorce does not become final, and the marriage is not terminated. Most Divorce Decrees become final once they are signed by the Judge and recorded in the County Judgment Records by the clerk.

C. Legal Separation

Either spouse may file an action for separate maintenance in Utah. Unlike a divorce, a separate maintenance decree does not terminate the marriage. The parties are merely living apart under terms dictated by the court. To obtain such a decree, one spouse is required to show (1) desertion without good cause or (2) failure of the other spouse to provide adequate support. In a separate

maintenance action the court has the power to dispose of property, determine custody of children and award support and alimony payments. Unlike an action for divorce, an action for separate maintenance does not require the plaintiff to be a three-month resident of the county where the action is filed.

D. Custody of Children

The courts have the authority to determine which parent shall retain custody of the children in both divorce and separate maintenance actions. Both parents are considered to have an equal right to custody of their children. The welfare of the child is considered to be the most important determining factor in a custody dispute. A major factor in deciding custody will be which parent was the primary caretaker of the child during the marriage. A request by a child that he be placed with a particular parent is usually given consideration by the court, but is not controlling. The court has the power to give a third party custody where the court finds that neither parent is fit to retain custody.

E. Child Support, Alimony and Property Division

The court may make such orders regarding custody of the children, division of property, and support of the parties and their children as it considers fair and reasonable. The court always retains the authority to make subsequent changes in its original order when circumstances make such changes necessary; however, questions of property division are usually considered final unless appealed within 30 days from the date the decree becomes final. The court will order visitation for the noncustodial parent and may award visitation to grandparents. The normal provision for visitation awarded by the court is "reasonable visitation rights," unless the court finds such visitation rights not to be in the best interest of the child.

The court may order either parent to pay child support and may award alimony to either spouse. In deciding whether alimony should be paid and in what amounts, the court considers the following factors: (1) the needs of each spouse; (2) the ability and opportunity of each spouse to earn income; (3) the standard of living enjoyed by the parties during their marriage; and (4) the ability of the payor to maintain the recipient spouse at or near the standard of living enjoyed during the marriage.

Utah has adopted uniform Child Support Guidelines. These are to be followed by the court unless it specifically finds it should not do so and explains why it is not doing so. The guidelines set support based on the income of both parents and then require payments by the non-custodial parent in the necessary amount to supply the full amount needed according to the guidelines.

F. Obtaining the Services of an Attorney

If a Utah resident cannot afford to pay an attorney to obtain a divorce, he or she may qualify to receive free legal assistance from various legal aid programs operated in the state. Among the agencies providing such services are the Legal Aid Society and Utah Legal Services Offices. If a person can afford a private lawyer but does not know one, he may contact the Lawyer Referral Service of the Utah State Bar for suggestions. If one spouse has the funds to pay both lawyers, the court can order that person to pay some or all of the attorney's fees of the other.

IV. RIGHTS AND DUTIES OF PARENTS AND CHILDREN

A. In General

The age of majority in Utah is eighteen for both males and females. The marriage of a minor automatically emancipates the minor.

Parents are required to send their children (ages six to sixteen) to public or (accredited) private schools. Children over sixteen years of age who have completed the eighth grade are excused from mandatory attendance if they are employed, or the school district has determined the student is unable to profit from school.

A husband and wife are equally obligated to provide adequate and proper support for their minor children. Parents may be held criminally responsible for their willful failure to support their children. The obligation to support minor children may be terminated only by adoption of the children by other individuals. This support obligation does not extend to children who have reached their majority by marriage.

A parent (or any adult) who physically abuses a child may be held criminally and civilly liable for such actions; a person convicted of child abuse may be fined and sentenced to prison. Both district and juvenile courts have authority to protect an abused or neglected child by appointing a guardian for the child, by awarding custody of the child to a third party and by such other orders as the courts deem necessary to protect the child's interest.

B. Rights of Illegitimate and Adopted Children and Stepchildren

Utah laws protect the rights of all children living in Utah, including illegitimate and adopted children. The father of an illegitimate child (born out of wedlock) is responsible for all expenses relating to the birth, education and maintenance of the child. An action to compel the father to furnish these expenses

may be brought by the mother, the child or a state agency. The father may also be responsible for all expenses incurred on behalf of his child within four years prior to the time an action is brought.

An action may be brought to determine the identity and responsibility of the father of a child within four years after birth (paternity suit). The marriage of the child's actual parents legitimizes a child born out of wedlock.

Illegitimate children may always inherit from their mother on an equal basis with legitimate children. An illegitimate child may inherit from the father only when his parents have married or when paternity has been established by a court of law.

Utah law recognizes rights and duties between a stepparent and a stepchild. Accordingly, a stepchild must be supported by a stepparent while residing in the household of the stepparent. This obligation ends if the natural parent and the stepparent separate and file an action to terminate the marriage. If there is a close bond between a stepchild and a stepparent, visitation rights may be awarded and a stepparent may voluntarily support a stepchild after the parent-stepparent marriage ends.

A minor child may be adopted by an adult person provided that: (1) the adopting parent is at least ten years older than the child; (2) the adopting couple both consent to the adoption; (3) the natural parents of the child consent to the adoption (except an adoption may take place without the consent of the natural parent where the natural parent has failed to support and maintain a meaningful relationship with the child); and (4) the adoptive child consents if over twelve years of age. Adoption gives a child the name of the adopting parent and all legal rights and duties of a natural child.

Once an order of adoption has been entered by the court, all records pertaining to the adoption are sealed and may be opened only by order of the court. The Department of Records is authorized to issue a new birth certificate of the adopted child, stating the adopting parents to be the natural parents. However, a registry has been established where parents who place their children for adoption and adopted children may register to learn about each other. Both must agree through the registry to be given information about and choose to meet each other.

C. Government Support for Needy Families

The Utah Public Assistance Act of 1961 provides a broad range of social services available to needy residents of Utah. Unemployment compensation benefits are available to employees who lose their jobs and are unable to find employment. General assistance programs provide financial and medical services to the

poor, elderly or disabled and to dependent children in need of care. These programs are normally administered by the Utah Department of Social Services or the Industrial Commission of Utah.

D. Inheriting Family Property

Under Utah law, any person eighteen years of age or older who is of sound mind may make a will. The will must be in writing, signed by the person making the will, and either witnessed by two persons over eighteen years of age or be in the handwriting of the person making the will.

If a Utah resident dies without a will, his property is distributed to his spouse and children. If there is no living spouse or child, it is distributed to parents. If parents are not living, the property is distributed to the decedent's brothers and sisters. If there are no living brothers or sisters, the property is distributed among other relatives, and finally, if there are no surviving relatives, the decedent's property is turned over to the state.

E. Birth Control and Abortion

Prophylactics may be purchased by anyone in Utah. Prescription drugs affecting birth control can only be obtained with a doctor's prescription.

Abortion is lawful in situations where the woman is in the first three months of pregnancy and over eighteen, or emancipated because of special considerations. If she is under eighteen and not emancipated, her parents must be notified of her intention to have an abortion. Parental permission is not required. Under more stringent requirements, an abortion may be obtained during the second three months of pregnancy.

A constitutional right to privacy was enunciated in Roe v. Wade, 410 U.S. 155 (1973), where a woman desiring an abortion attacked the constitutionality of Texas statutes making the procurement of an abortion a crime. The Supreme Court declared the statutes violative of the right of privacy, "founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action."

Similarly, the Supreme Court has held that a constitutional right of privacy is violated by a criminal statute prohibiting the use of contraceptives. Griswold v. Connecticut, 381 U.S. 479 (1965) (involving married persons); Eisenstadt v. Baird, 405 U.S. 438 (1972) (involving unmarried persons).

Several cases arising in Utah have dealt with the sensitive issues of abortion and birth control. Three of the major cases are summarized below.

T. H. v. Jones, 425 F.Sup. 873 (D. Utah 1975), declared that the constitutional right to privacy was violated by a Utah statute requiring parental consent before minors could receive family planning services from the Utah Planned Parenthood Association.

L. R. v. Hansen, Civil No. C-80-0078J (D. Utah, Feb. 8, 1980) held that a Utah statute requiring a physician to notify, if possible, the parents or guardian of a minor upon whom an abortion is to be performed does not apply to emancipated minors and that, if so applied, would be unconstitutional.

H. L. v. Matheson, 450 U.S. 398 (1981), held as constitutional the parental notification statute at issue in L. R. v. Hansen. The United States Supreme Court ruled in that case that a state may require such notification if the minor girl is unemancipated, living with and dependent upon her parents, but that such a statute may be unconstitutional if applied to emancipated or mature minors.

F. Guardians, Foster Homes, and Child Care Institutions

If, for some reason, a parent is unwilling or unable to care for his or her child, Utah law provides that the court may appoint a guardian to protect the child's interest and welfare. Any person may petition the Juvenile Court to take jurisdiction over a child in Utah and if the parents of a child die or become incapacitated, either the Juvenile Court or the Probate Division of the District Court may appoint a guardian for the child or children. If permitted by the court, a minor over the age of fourteen may choose his guardian. A guardian's power is terminated when (1) ordered by the court, (2) the minor reaches eighteen years of age, or (3) the minor marries.

When no one is available or willing to assume the role of guardian, the court will appoint the Department of Social Services as guardian, and the Department will then place the minor child in a foster home or, if none is available, in a child care institution.

V. COHABITANT ABUSE

Any person who has been subjected to abuse or is in danger of immediate abuse from someone with whom they are living or with whom they used to live may file a complaint in the district court of the county where either person resides seeking a protective order whether or not the person seeking the order has left his or her residence(s). The county clerk will help process the complaint and the court will issue a protective order prohibiting abuse for up to 60 days.

APPENDIX

ORGANIZATIONS TO KNOW -- CHAPTER FIVE

Birthright of Salt Lake
2134 South 800 East
Salt Lake City, Utah 84106
Phone: 484-4616
Hotline: 1-800-848-5683

Catholic Community Services
2300 West 1700 South
Salt Lake City, Utah 84104
Phone: 977-9119

Children's Center
1855 East Medical Drive
Salt Lake City, Utah 84108
Phone: 582-5534 or
5242 South 4820 West
Kearns, Utah 84118
Phone: 966-4251

Children's Service Society of Utah
576 East South Temple
Salt Lake City, Utah 84102
Phone: 355-7444

Community Counseling Center
660 South 200 East
Salt Lake City, Utah 84111
Phone: 355-2846

Easter Seal Society
254 West 400 South #340
Salt Lake City, Utah 84101
Phone: 531-0522

Family Support Center
2020 Lake Street
Salt Lake City, Utah 84105
Phone: 487-7778

Midvale Family Support Center
75 West Center
Midvale, Utah 84047
Phone: 255-6881

Legal Aid Society
Domestic Violence Program
225 South 200 East
Salt Lake City, Utah 84111
355-HELP (4357) Spouse Abuse

Legal Aid Society
Family Law Legal Assistance
225 South 200 East
Salt Lake City, Utah 84111
328-8841

Planned Parenthood Association of Utah
Administration, Community Education, and Library
654 South 900 East
Salt Lake City, Utah 84102
Phone: 532-1586
(Clinics in other locations)

Primary Children's Medical Center
100 North Medical Drive
Salt Lake City, Utah 84113
Phone: 588-2000
Emergency: 588-2233

Rape Crisis Center
2035 South 1300 East
Salt Lake City, Utah 84108
Phone: 467-7282
Emergency: 467-7273

St. Vincent dePaul Center
437 West 200 South
Salt Lake City, Utah 84101
Phone: 534-1500

Salt Lake County Youth Services Center
3999 South Main #N-2
Murray, Utah 84107
Phone: 264-2273

Utah Parent Center
2290 East 4500 South, #110
Salt Lake City, Utah 84117
Phone: 272-1051

Utah State Bar
Young Lawyer's Section
Needs of Children Committee
Children's Rights and the Law
Phone: 531-9077

Utah State Department of Social Services
Child Abuse and Neglect
120 North 200 West
Salt Lake City, Utah 84103
Statewide Hotline: 1-800-678-9399
Child Abuse Hotline: 1-800-422-4453

Utah State Department of Social Services
Family Services
120 North 200 West
Salt Lake City, Utah 84103
Phone: 538-4100

Utah State Department of Social Services
Family Support Office
120 North 200 West
Salt Lake City, Utah 84103
Phone: 538-3970

Utah State Department of Social Services
Recovery Services Office
120 North 200 West
Salt Lake City, Utah 84103
Phone: 538-4400

Utah State Juvenile Court
Administrative Office
230 South 500 East
Salt Lake City, Utah 84102
Phone: 578-3800

Utah State Office of Education
Joyce Hansen, Specialist
250 East 500 South
Salt Lake City, Utah 84111
Phone: 538-7743

Utah Women's Health Center
515 South 400 East
Salt Lake City, Utah 84111
Phone: 363-1920
Emergency: 264-5520

Women in Jeopardy Program
300 South 322 East
Salt Lake City, Utah 84111
Phone: 355-2804

CHAPTER FIVE

FAMILY LAW

"Where You Live" Questions and Answers

p. 293. **What is the law in your state regarding what persons may legally marry? Are there any restrictions regarding mentally or physically disabled people?**

In order to participate in a legal marriage in the state of Utah, one must be either an emancipated minor, eighteen years old, or have parental or guardian permission. Prohibited marriages include incestuous marriages, marriages to more than one person, marriages to persons under 14 years of age, and marriage between persons of the same sex. There aren't any restrictions regarding physically disabled people participating in a legal marriage; however, a mentally disabled person must be mentally able to enter a contract and legally competent.

p. 295. **Where does a person go to obtain a marriage license in your state? Is a physical exam or blood test required? Is there a waiting period before one can get married? If so, how long is it?**

A person obtains a marriage license in the state of Utah from the County Clerk's office. There is no waiting period after obtaining a license and no physical exam or blood test is required.

p. 296. **Does the state allow common law marriages? If so, how long must a couple live together to make the common law marriage valid?**

Common law marriages are valid in Utah. The law does not specify how long a couple must live together in order for a common law marriage to be valid; however, the couple must be legally capable of entering into a solemnized marriage, have cohabitated, assume the rights, duties, and obligations of marriage, and consider themselves to be husband and wife.

p. 306. **What programs are available in your community to help abused women? Are there facilities where abused women can go if they decide to leave home?**

The Y.W.C.A. has a program entitled "Women in Jeopardy" for abused women. (See additional list of agencies in Appendix for addresses and telephone numbers.) The "Women in Jeopardy" program has four locations in the state of Utah: one each in

Ogden, Price, Vernal, and Salt Lake City. Each has overnight facilities.

Another program for abused women is the Spouse Abuse Program of the Legal Aid Society. Call the Legal Aid Society at 355-HELP(4357) for more information.

p. 307. **Can a husband be criminally prosecuted in your state for sexual assault or rape of his wife? Can she sue him in civil court?**

Any time a person is forced to participate in any sexual act against their will it is considered sexual assault or rape. Therefore, in the state of Utah a husband may be criminally prosecuted for sexual assault or rape if he has sexual intercourse with his wife without her consent.

p. 310. **How is paternity determined in your state? What agencies can a mother or child go to for help in determining paternity?**

In the state of Utah, paternity is determined by either acknowledgment or by legal determination by the Court. Many agencies will help a mother or child in determining paternity. These include the Department of Human Services Family Support Office and Recovery Services Office. See Appendix for addresses and telephone numbers.

p. 312. **May teenagers receive health services without their parents' permission in your state? May these services include birth control counseling? At what age may a person legally obtain contraceptives in your state?**

Any person in the state of Utah who is under the age of 18 and not otherwise emancipated, married, or a member of the armed forces of the United States may be treated for sexually transmitted diseases at any state-funded institution without parental consent but may not receive any birth control counseling or contraceptives without the prior written consent of either parents or guardian.

A minor may receive both birth control counseling and contraceptives without parental consent at an agency such as Planned Parenthood because it does not receive funds from the state of Utah. Planned Parenthood encourages the minor to talk over any decisions regarding birth control with parents or guardians but does not require parental consent.

A person may legally obtain contraceptives in the state of Utah from any state-funded institution at age 18, at the time of emancipation, or if they enter into a legal marriage before they are 18.

p. 314. **In your state, how long must a parent support a child? What if the child is disabled? Does your state have any programs to assist parents with their physically or mentally disabled children?**

In the state of Utah a parent is required by law to support a child until the child is 18 years old, otherwise emancipated, or legally married. At age 18 a disabled child will begin to receive Social Security benefits, and a parent is no longer legally responsible to pay for the child. The courts can order a parent to continue to support a disabled child, but this is decided on a case by case basis rather than by a general law.

The state of Utah has many different programs to assist parents with their physically or mentally disabled children. For information on those programs call the Easter Seal Society of Utah, the Division of Family Services, or the Utah Parents Center. See Appendix for phone numbers and addresses.

p. 315. **Does your state permit parents to educate their children at home? If so, what must a home school provide? What reasons must a parent give for wanting to educate his or her children at home?**

Parents are permitted to educate their children at home in the state of Utah if the child receives instruction at home in the areas prescribed by law, the State Core Curriculum, for the same length of time as the child would be taught if they attended a public or private school. They must attend school for the same length of time as the public school (180 days) and the length of the day must also be the same as the public schools. A parent does not need to give a specific reason to educate his or her children at home, simply one which is deemed appropriate by the State Board of Education. Contact the Utah State Office of Education for more information.

p. 321. **What is your state's neglect or child abuse law? Who is required to report evidence of child abuse in your state?**

Utah's child abuse law can be found in Utah Code Ann., 1991, Section 76-5-109. It states that any person who inflicts serious physical injury upon a person under the age of 17 or who permits another to inflict serious physical injury upon a child who is in their care could be found guilty of child abuse.

Any person, especially family members, doctors, nurses and teachers, who has reasonable cause to believe that abuse has been inflicted on a child is required by law to report the evidence to the proper authority. The Utah Statewide 24-hour child abuse hotline telephone number is 1-800-678-9399.

p. 330. **Does your state law allow adopted children to find out who their natural parents are? What does the law provide?**

Children may find out who their natural parents are only if both the child and natural parent have registered with the State Registry maintained by the Bureau of Vital Statistics. The Courts have adopted a rule permitting requests to open or obtain information from adoption files for limited purposes, and only limited information (usually regarding health problems) will be made available.

p. 333. **What marriage or family counseling agencies exist in your community? Are these privately or publicly operated? How much do they charge?**

See Yellow Pages under "Mental Health Services." Some of the organizations offering counseling are:

The Assertion Training Institute
Child Psychiatry - Dept. of Primary Children's Medical Center
The Children's Center
Davis County Mental Health
Family Counseling Center
Intermountain Psychiatric Clinic, Inc.
Rocky Mountain Family Institute
Western States Family Institute
University of Utah Counseling Center

Most counties have their own services or are a part of a regional mental health and counseling program. Many religious denominations have these services available.

The above list represents organizations which are both privately and publicly operated. Charges vary on a sliding scale based on ability to pay.

p. 334. **What are the grounds for divorce in your state? Does your state allow no-fault divorce or divorce by consent? How long does it take to obtain a divorce in your state?**

The grounds for divorce in the state of Utah are irreconcilable differences, impotency, adultery, desertion, neglect, drunkenness, felony conviction, physical cruelty, mental cruelty, separation, and insanity. The state of Utah allows no-fault divorce or divorce by consent. It takes a minimum of three months to obtain a divorce in Utah.

p. 344. **What programs exist in your state to aid needy families? Are there any innovative programs in your state to deal with poverty? How much AFDC funding may a mother with three children receive in your state? What are the rules determining who is eligible for AFDC?**

There are many programs in the state of Utah to aid needy families. One new program that has recently been implemented here in the state to deal with poverty is the Emergency Work Program, adopted by the Federal Reform Act, which provides assistance to a two parent household where neither parent is incapacitated but where neither parent has a job at the present time. The parents must participate in a combination of community work, educational training, and job searching for 40 hours a week. The family is paid at the same level as AFDC but is paid twice a month based on the participation of the primary worker. In other words, if the primary individual works only 80% of their required time, they would receive only 80% of the federal funding.

A mother with three children would receive $402.00 per month in AFDC funding in the state of Utah. This is the base level grant. If the mother had more dependent children, she would receive more funding and likewise, if she had fewer children or another source of income, she would receive less money. Any single parent who is unable to work and has at least one dependent child in the home is eligible to receive AFDC funding. These requirements also apply to a single mother in her third trimester of pregnancy.

p. 345. **Where in your community does a person apply for Medicare benefits? For social security benefits? What is the procedure for applying?**

A person applies for Medicare and social security benefits at the Social Security Administration.

Murray Office:	6065 South 300 East Murray, Utah 84107 524-4115
Office Hours:	Mon-Fri 8:45 a.m. - 4:15 p.m.
Salt Lake Office:	461 South 4th East Salt Lake City, Utah 84111 524-4115
Office Hours:	Mon-Fri 8:45 a.m. - 4:15 p.m.

The following items are needed when applying for benefits: W-2 forms for the last two years prior to retirement, social security card, and certified birth certificate. If a wife is applying, a certified marriage certificate and the husband's social security number are also needed. In some cases, military discharge papers and death certificates are needed.

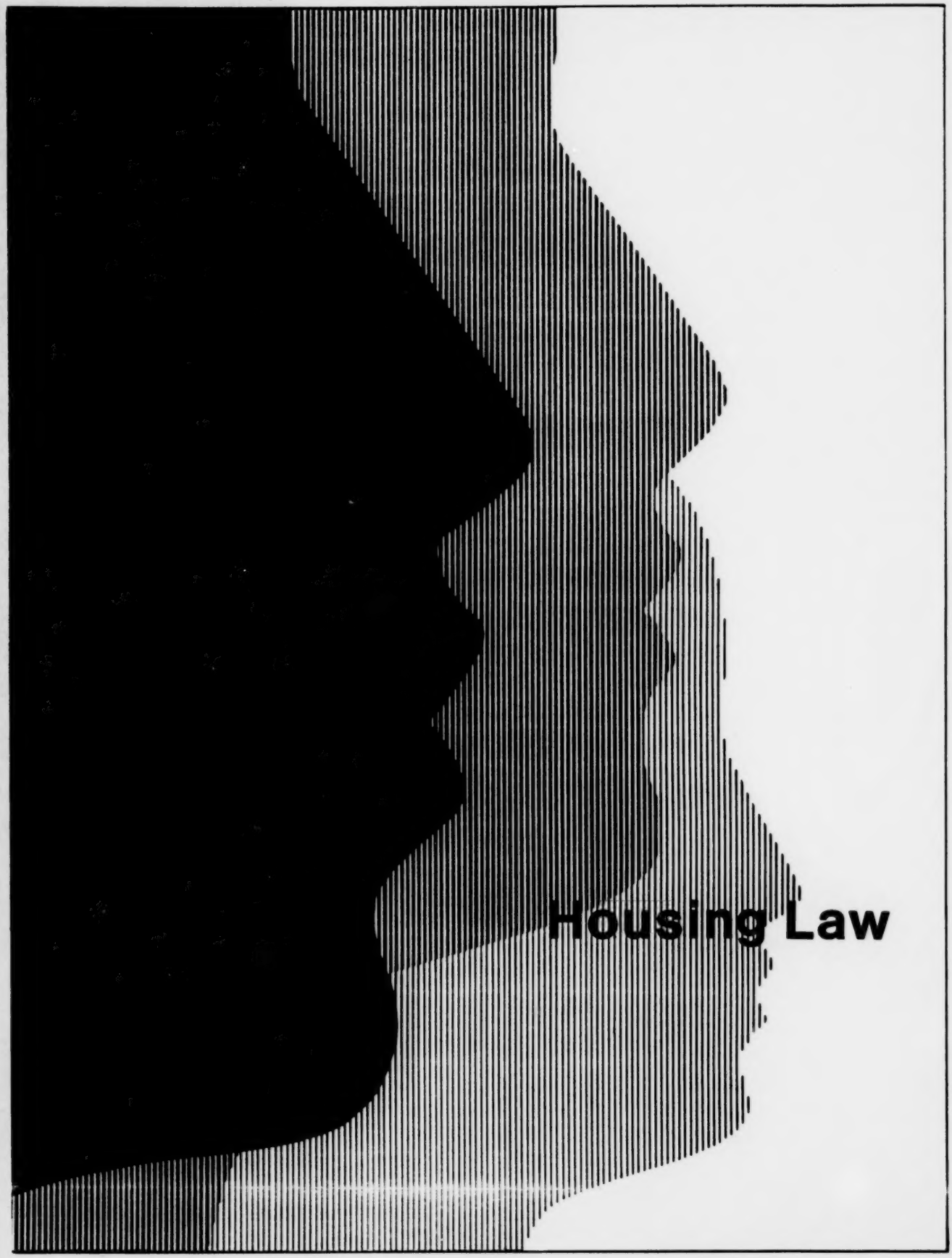
p. 348. **What government job programs exist in your community? Are there any government-operated housing projects in your area?**

The CETA Program in Salt Lake County and Job Corps Program in Weber County are both being phased out.

There are many government operated housing projects in the state of Utah. One example is the Friendship Manor apartments located in Salt Lake City which provides housing for mentally challenged individuals. Call the Information and Referral Service at 487-4716 for more information on these programs.

p. 351. **How old does a person have to be to write a will in your state? Is a will valid if it is written in a person's own handwriting? If a person dies without a will, who inherits his or her property?**

A person must be eighteen years old to write a will in Utah. A will written in a person's own handwriting, a holographic will, is valid provided the signature and the major provisions are in that person's handwriting. If a person dies without a will, his or her estate is considered intestate and inheritance is determined in Part I of Intestate Succession in the Utah Probate Code.


Housing Law

CHAPTER SIX

HOUSING LAW*

I. INTRODUCTION

This chapter addresses aspects of housing law in Utah, including both public and private housing, rental (landlord/tenant), ownership, building, financing, purchasing, and selling. It has an Appendix of Organizations to Know that provide names and addresses for easy reference to helpful organizations in Utah. It also has a question and answer section that may be helpful in answering questions about Utah housing law.

II. LANDLORD/TENANT RELATIONS

A. Introduction

Although the amount of money at stake may not be as much when someone rents a place to live as when he buys a home, there is just as much room for negotiation. Many of the same details should be discussed and much the same inspection should be made when renting as when buying. Many people overlook this and are dissatisfied with their renters or landlords.

This section on renting will explain the particular Utah state laws that regulate the landlord/tenant relationship. It will discuss the same topics as the Street Law section on renting, but from the point of view of applicable Utah law. While some of Utah laws regarding the rental relationship were written long ago, some are recent. Three laws contain a number of "legal" and old-fashioned words, many of which are defined in the Glossary.

At a minimum a landlord expects a tenant to pay the rent on time, to take proper care of the apartment, to advise the landlord of maintenance problems, and to carry out the terms of the rental agreement.

On the other hand, the tenant expects a clean building or apartment where the appliances and utilities work properly and where the tenant can have the "quiet enjoyment" of the premises. The tenant expects the landlord to keep up the maintenance on the building or apartment and to keep the terms of the rental agreement or lease.

Good communication between a landlord and tenant helps avoid many problems. If the tenant has an emergency and cannot pay his

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*This chapter was written by Suzanne Mellor of Utah Legal Services and Douglas Matsumori of the law firm Ray, Quinney and Nebeker. It was edited for this edition by Douglas Matsumori.

rent on time, the landlord will usually make arrangements for late payment if the tenant comes to him in good faith and explains the problem. If the tenant is doing something the landlord does not like (keeping a pet or not watering the lawn, for example), the landlord should discuss it with the tenant before the problem gets out of hand. Most landlords and most tenants are responsible and carry out their agreements. Some landlords and some tenants, however, are not responsible. If a tenant has a "bad" landlord or one with whom he does not get along, he probably should move. In some situations it would be extremely burdensome for the tenant to move, and he should attempt to get along with the landlord. If a landlord has a bad tenant, it may be best to evict that person if the tenant's conduct warrants such action.

Questions

1. If you are renting a place to live now, do you know your landlord?

2. Do you know how to reach him or her?

3. Do you know his or her telephone number and address?

4. Is your landlord the owner of the property or a hired manager?

5. Whom should you call in an emergency?

6. If you are a landlord, do your tenants know how to reach you? Do they know whom to call in emergencies?

B. The Rental Agreement or Lease

1. Discussion of the Terms

Unfortunately, many people do not discuss the terms of the rental agreement in much detail. Whether the agreement is oral or written, certain terms should be discussed.

a. Rent How much is the rent? When is it due? Are late charges added if the rent is not paid on time? What is the condition of the premises? Has the tenant inspected them?

b. Deposit How much is the deposit, if any? What is it for? A cleaning deposit assures the landlord that money will be available for cleaning if the tenant leaves the place dirty or damaged. A security deposit assures that the tenant will live up to his part of the bargain. Is any part of the deposit nonrefundable? If so, and if the agreement is in writing, Utah law requires the landlord to notify the tenant in writing when the

tenant moves if that part of the deposit is nonrefundable. If the rental agreement is oral, it is unclear whether the notice must be in writing.

c. Utilities Who pays for the utilities? What utilities are there? How will they be paid? Usually the tenant has the utilities for the apartment put in his or her name and is billed directly by the utility company. Sometimes, however, a landlord will develop complicated systems of paying which the tenants feel are unfair. This often happens when one gas meter services a duplex or fourplex, etc. The landlord may bill the tenants on the basis of square footage when there are four or five people in one unit and only one or two in another. How should this situation be handled? See also the discussion of utilities in the Consumer Law Chapter of this book.

When the tenant agrees to pay for the utilities, what is he agreeing to pay? Gas? Electricity? Water and sewage fees? Garbage collection?

d. Complex Agreements Some landlords and tenants make rather complicated rental agreements. For instance, the landlord may accept all or part of the rent in improvements to the property or in management of the apartments. Often each party believes he or she fully understands how the agreement will work and what is expected. More often than not, however, it becomes apparent that misunderstandings have occurred which lead to bad feelings and distrust. Complex agreements always should be in writing.

2. Oral Agreements

Many rental agreements are arranged orally. Usually this occurs where the tenant is renting on a month-to-month basis. If a tenant enters into an oral agreement with a landlord, he should be sure to discuss the different terms stated above. There is nothing "wrong" with an oral agreement; it can be upheld by the courts even though it is not in writing. However, an agreement for a rental period of one year or more must be in writing or the courts cannot enforce it. A court would probably interpret such an agreement as if it were a month-to-month agreement.

If a landlord and tenant have an oral agreement, what are their respective understandings of the terms? What other information would they like to have?

3. Written Agreements

If an agreement is in writing, it probably was written by the landlord. Therefore, it will probably protect the landlord's interests more than the tenant's. If a tenant has a written lease or rental agreement with his or her landlord, which provisions

favor the landlord and which favor the tenant? See the sample agreement on pages 369-370 in Street Law.

In general, people can agree to almost any terms. However, the law protects one from contracting away some of his rights. In rental agreements one can agree to terms which will expand his rights, but those which restrict rights will probably not be enforced by the courts. For example, in Utah both the landlord and the tenant are required by law to give the other party fifteen days notice to terminate the agreement. The tenant must tell the landlord he is moving at least fifteen days before the end of the rental period (usually the 15th of the month), and the landlord must give a tenant a "No Cause Eviction Notice" at least fifteen days before the end of the period. The written agreement may require thirty-days notice by either party, but it could not provide ten-days or five-days notice.

Both the landlord and the tenant should have a signed copy of the lease or rental agreement.

4. Paying the Rent

A tenant should always get a receipt when paying rent in cash. If possible, paying rent by money order should be avoided unless it is delivered personally and a receipt is obtained. If a money order is lost in the mail, it takes up to six months to trace. In the meantime the landlord will want the rent legitimately due. This can result in the tenant's having to make two rent payments or in being evicted for nonpayment of rent. Many landlords do not believe tenants who tell them the money order was lost.

Payment by check gives the tenant an automatic receipt when the landlord cashes it. Payment on a check can be stopped if it gets lost in the mail or otherwise misplaced.

5. Deposits

Utah landlord/tenant law requires the landlord to return all the refundable deposits to the tenant within thirty days of the termination of the tenancy or fifteen days after the landlord receives the tenant's new address, whichever is later. It is the tenant's responsibility to provide the landlord with his new address. If the landlord decides to keep some or all of the deposit, he must detail the expenses he has deducted from the refund. Legitimate reasons for the landlord to keep part or all of a deposit might be unpaid rent or, if the agreement or lease so provides, possible deductions for cleaning or maintenance.

Except for a $100 civil penalty and court costs, the law has no built-in punishment for landlords who do not follow this procedure. If the landlord refuses to return the deposit, the tenant will have to sue him in small claims court.

The Utah law does not require the landlord to keep deposits in separate accounts and to give the tenant interest on his money.

6. Responsibility for Repairs and Maintenance

The general rule is that the tenant is responsible for the rented premises and the landlord for common areas such as hallways and grounds. Usually the tenant will be held responsible for repairing items which he damaged and for other expenses incurred because of the tenant's carelessness, such as the sink backing up because the tenant washes his hair in it, or the toilet clogging when the tenant's toddler wants to see his toys disappear. On the other hand, large maintenance or structural problems should be handled by the landlord, for example, when the plumbing does not work properly because the system is old or was not correctly installed.

If the items were in need of repair before the tenant moved in, the repairs are the landlord's responsibility. If the problem arose during the tenant's occupancy, the tenant may be held responsible. Of course, if the tenant agrees to accept the premises with problems, the landlord may not have to repair.

If a tenant likes an apartment but wants the locks repaired or mended and the landlord agrees to do it, the tenant should get the landlord to put in writing that the locks will be repaired by a specific date. The landlord may authorize the tenant to make the repair and to deduct any expense from his rent (backed up by receipts, of course). Any agreements to repair made by the landlord and tenant at the time the tenant moves in should be put in writing.

Utah, unlike many other states, does not have a "**repair and deduct**" law. This law allows tenants to make small repairs themselves, up to a limited dollar amount, within a given period of time, and deduct the expense from their rent. In Utah the tenant's duty to pay rent in full and on time is not dependent on the landlord making repairs.

If a tenant has occupied the apartment for several months and finds that some repairs need to be made, he should write the request to the landlord and await a response. If nothing is done, he should write a second letter. If the second letter gets no response, the tenant should try to contact the landlord personally. If the tenant wants to take the chance, he would incur the expense, deduct it from the rent and wait to see what happens. The landlord may accept the rent less the expense as full payment. Yet, the landlord does not have to accept it.

In 1990, the Utah State legislature enacted the "**Utah Fit Premises Act.**" See Utah Code Annotated Sections 57-22-1 - 57-22-5.

While this law does not go so far as letting the tenant deduct rent for the failure of the landlord in maintaining "fit premises," the law does set up some specific standards and gives some rights to tenants if certain procedures are followed. Essen-tially the law says that "each residential unit shall have elec-trical systems, heating, plumbing and hot and cold water." More generally, it provides that the landlord has the obligation to maintain a residential unit "in a condition fit for human habita-tion and in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the resi-dential unit is located." The law requires the landlord to maintain a set of minimum standards related to safety and health (including garbage receptacles and waste disposal containers where there is more than one unit in a building). If the landlord does not comply, there is a procedure that ultimately allows the renter to have a remedy in court (including refund of rent under certain circumstances). This remedy is only available if the problem is not caused by the renter or those for whom the renter is respon-sible. The procedure involves giving notices to the landlord in writing about the defects in the property. After two notices and the passage of a "reasonable" time, the renter is permitted to sue in court.

The only problem with this law seems to be that any of the rights and duties can be changed by contract. If the landlord has a better bargaining position than the renter, he can simply have a contract that puts the duties for fitness for human habitation on the renter. Also, the law allows the landlord to simply terminate the lease instead of fixing the problem. If he terminates the lease, the landlord must pay back deposits and any rent that has been paid in advance. A renter who has no alternative place to live would not likely try to exercise the remedies of this law. Nevertheless, it seems to be a step in the direction of giving renters some additional rights.

If a tenant is not sure who should be held responsible for making a certain repair, how would he find out?

C. **Problems**

1. **Abandonment**

A Utah law states that the landlord can assume the tenant has abandoned or moved out without informing the landlord, if:

a. the tenant does not tell the landlord he will be away;

b. the tenant does not pay the rent within fifteen days of when it is due; and

c. The tenant has left behind furniture and belongings.

Abandonment can also be assumed if:

a. the tenant does not tell the landlord he will be away;

b. the tenant does not pay the rent the day it is due; and

c. the tenant has moved all or most of his belongings out of the property.

If the tenant abandons the property or the landlord properly assumes the tenant has abandoned, the landlord may retake the property and rent it to someone else. The tenant is responsible for any costs the landlord incurs in re-renting the dwelling, plus any rent the tenant would have paid under the terms of the lease or rental agreement. If the tenant abandons the property and leaves behind personal property, the landlord can remove the property and have it stored. The tenant will be responsible for paying moving and storage costs. The landlord must make "reasonable" efforts to contact the tenant and let him know where the possessions are being held or stored. If the tenant's property is not recovered within thirty days, the landlord may sell it and apply the money toward any rent owed.

This is another situation where communication with the landlord can save the tenant trouble and possible money.

2. <u>Termination</u>

Most rental situations will be terminated by one of three different methods: (a) proper notice, as required by state law or the written agreement; (b) expiration of the term of the agreement as specified in the lease; or (c) eviction proceedings. Two "unlawful" methods are not uncommon: (a) the tenant breaks the agreement by leaving without proper notice or before the lease term expires; or (b) the landlord changes the locks. (Note that the word unlawful was used, not illegal. "Illegal" implies that an act was criminal and that the actor could be prosecuted and sent to jail. Although breach of agreement and changing locks are not approved by the law, they are not criminal acts. They do give rise to civil, not criminal, liability and the actor can be sued for money damages.)

Proper notice requires notification of the other party at least fifteen days before the end of the rental period or whatever amount of time was agreed to in the lease or rental agreement, whichever is greater. Termination of a lease by the passage of time leaves a tenant in an uncertain position unless the

consequences of termination are also specified. If a tenant's lease is soon to expire, he should contact the landlord and attempt to renew or negotiate a different agreement. The eviction method of terminating a rental agreement will be discussed in the next section.

When a tenant unlawfully terminates the agreement by giving improper notice or leaving before the term of the agreement has expired, it could become expensive. If the tenant can find someone willing to sublease, assuming the landlord approves, or to take over the lease, the tenant would not be directly responsible for paying rent to the landlord.

However, if a tenant with a month-to-month agreement gives notice to the landlord on the first of the month, pays only one week's rent, and moves out by the sixth or seventh, how much would the tenant owe the landlord?

If the tenant with a one-year lease moves out after six months, how much would the tenant owe?

The answer to both these questions is: it depends. It depends on how long it takes the landlord to re-rent. A landlord in this situation has a duty to **mitigate the damages**, to keep his losses as small as possible by re-renting as soon as possible. The landlord must advertise and attempt to rent the property. In the first situation, if the landlord rented the apartment on the 21st day of the month, the vacating tenant would have to pay two more weeks of rent, from the 7th to the 21st. In the second situation, if the housing market was depressed and the landlord could not find a renter for three months even though he tried, the vacating tenant would have to pay the three months rent. If, however, the tenant had found a suitable person willing to take over the lease, the landlord could not refuse unreasonably to rent to that person.

Sometimes when a tenant is behind in rent or the landlord and tenant do not get along, the landlord will change the locks on the apartment to make the tenant move. This is "unlawful" behavior and is specifically prohibited by Utah law. However, the law has its drawbacks: it takes time to go to court. If the tenant did not have the money to pay rent, he likely would not have the money to pay a lawyer. Free legal help is available to low income people in legal aid and legal services offices. Most of these offices are in large cities and would not be of much help to the tenant in this situation. The worst element of the lock-changing situation is, of course, that the tenant's belongings, including clothes and possibly important medicine, dentures, car keys and other such items, are locked in the dwelling. The landlord in a sense is holding the property for ransom in return for payment of back rent. Even with a fast-working lawyer who could draft the necessary papers and get a "temporary restraining order" signed by

a judge, the process would take a couple of days, if not longer. Unfortunately, the fastest way for the tenant to obtain his belongings probably is to borrow the money and pay the landlord. However, this may not discourage the landlord from future unlawful evictions.

Sometimes, a landlord will take something that belongs to the tenant until the rent is paid. The police likely would not arrest the landlord for stealing the tenant's property. Rather, they would say it is a civil matter and advise the tenant to see a lawyer. Again the law does not provide for a resolution of this situation. When a landlord takes property without legal process, it is called **conversion.** Conversion means that he has taken the tenant's property for his own use. The tenant can sue the landlord for conversion and ask for money damages as well as for the return of the property.

What should a judge do under the following circumstances? The tenant was behind in rent and the landlord changed the locks on the doors to the tenant's apartment and is holding all the tenant's property? Should money be awarded to either side? Should the judge's decision be affected if the tenant did not pay rent because the apartment furnace was malfunctioning? Should it make a difference if the tenant withheld the rent because the landlord had not cleaned the carpet as promised or had not painted the bathroom the pale peach color the tenant wanted? What other facts, if any, would the judge want to know?

3. Eviction

Eviction is a quick process by which a landlord can get his property from the tenant. The eviction process, including any court proceedings, can take as little as two weeks. Homelessness is serious business, so a tenant should know how the process works. Landlords should know so they can do it properly.

Lawfully, a landlord cannot lock a tenant out of the rented premises, move the tenant out, or take any of the tenant's property before going through the correct legal processes. The tenant should know that if he is evicted, the judge may order him to pay the landlord treble or triple damages. **Treble damages** are figured by multiplying the daily rent by three for each day the tenant stayed in the rented premises after the day the eviction notice expired.

a. **Eviction Notices** The first step of the eviction occurs when the landlord gives the tenant a written notice to leave the premises. This notice indicates that the tenant/landlord relationship has ended. There are four types of notices outlined in the Utah law which define the eviction.

i. Three-Day Alternative Notice -- This notice must be used if the tenant owes rent and the landlord wants

him out so he can re-rent the place. The notice must say that the tenant must pay the amount owing OR leave within three days. If, within three days of receiving the notice, the tenant offers the money owing, the landlord must accept it, and the eviction process is halted. If the tenant does not offer the money within three days and does not move out, the landlord can go to the next step of the eviction. If the tenant offers the money within three days and the landlord refuses to accept it, the tenant should save the money. Proof that the tenant has the money and is willing to pay it is a legal defense to a non-payment eviction suit.

ii. Three Day Nuisance Notice -- This notice must be used if the tenant is disturbing his neighbors, wasting or damaging the property, or violating building or health codes. If the tenant does not move out within three days of receiving this notice, the landlord can go to the next step of the eviction.

iii. Fifteen-Day Notice -- This is the notice the landlord must use if, for no specific reason, he simply wants the tenant to move. Such a notice must be given to the tenant at least fifteen days before the end of the rental period; otherwise, it is not valid. If the tenant does not move out by the beginning of the next rental period, the landlord may continue to the next step of the eviction.

iv. Notice to Comply or Quit -- This notice must be used if the tenant has broken any one of the provisions of the agreement. It must state that EITHER the tenant comply with the provisions of the agreement within three days OR the tenant must leave the premises within five days. If the tenant does not comply or leave, five days after he receives this notice the landlord may proceed with the eviction

b. How the Tenant is Informed of Eviction If the tenant fails to comply with any of these notices which he has received, he may be subject to treble damages (three times the daily rent) at the end of the eviction process.

The landlord must give the tenant proper notice for each situation. He must also give the notice to the tenant in one of four ways, as provided by Utah law (the giving of the notice to the tenant is called **service**: the tenant is served with the notice).

i. He can have someone give the notice to the tenant. The person does not have to be a sheriff or a policeman; or,

ii. He can send the tenant a copy by registered or certified mail to the tenant's home; or,

iii. He can put a copy on the tenant's door and mail a copy to the address; or,

iv. He can leave a copy with someone at the tenant's home and mail a copy to the address. He may leave the notice with a child at the home only if the child is old enough to be responsible for giving the notice to the tenant.

c. **Unlawful Detainer** Unlawful detainer describes the tenant's status after the eviction notice has expired. It means that the tenant is unlawfully or wrongfully detaining or holding the landlord's property. When the tenant is in "unlawful detainer," he may be liable for treble (or triple) damages.

For example, the rent is $300 per month and the tenant is behind one month's rent. On the 5th of the following month (Tuesday) the tenant gets good service of a three-day Pay or Quit Notice, and the tenant finally leaves on the 24th of the month. If the landlord follows through with the eviction, how much back rent and damages could the landlord be awarded?

$300/month=$10.00/day rent - $30.00 day in treble damages

The tenant owes $300 for one month:	$300
The tenant owes $10 X 10 for the day in the 2nd month before the notice expired:	100
Treble damages can be awarded for the 11th through the 24th or $30 x 14:	420
Total which can be awarded against tenant:	$820
Total amount of actual rent owed (without treble damages): $300 + ($10 x 24) =	$540

The above example shows clearly why treble damages are to be avoided.

4. **The Summons and Complaint**

The second part of the eviction procedure is a lawsuit by the landlord against the tenant. This is done by having the tenant served with a **summons** and **complaint**. These papers are legal documents. The delivery of the summons to the tenant begins the lawsuit. The summons tells the tenant that he is being sued and that to protect his rights he should "answer" the complaint within a specific period. The summons does not tell the tenant what the lawsuit is about. In an eviction action the landlord can have the time to answer the summons reduced from twenty to three days. To get this reduction of time, the landlord or his lawyer must go personally to a judge and have the summons signed by the judge. The tenant's copy should have the judge's signature on it (a copy of the original with the signature), or the person serving the summons should have the original and show it to the tenant. Because eviction can be such a quick process, the courts want to make certain that all procedures are correctly followed.

The complaint, which should be served with the summons, explains the lawsuit. It states the landlord's version of the facts: that the tenant and the landlord had an agreement; that the tenant did not fulfill his part of the bargain (by not paying rent or other reason(s)); and that the landlord has terminated the relationship properly with the properly served eviction notice. It would then state the amount of back rent owed, the amount in treble damages the landlord claims and any amounts claimed for damage to property, cleaning, etc.

The tenant must respond with an answer in writing to the summons and complaint. He should contact a lawyer to do so. The tenant has the right to have his side of the story heard. However, if the tenant does not answer the summons and complaint, he will lose his right to have his story heard in a trial. The judge will issue a default judgment in favor of the landlord, giving him everything he asked for. If the tenant files an answer (by giving a copy to the court), he will be given a court date. At the trial, the judge will give each side the opportunity to tell his story before making a decision and issuing a judgment.

It is essential that a tenant who has been served with a summons and complaint <u>read</u> them. Amazingly, many people ignore them, hoping they will go away. Sometimes the legal documents are difficult to understand. But if the summons and complaint are ignored, the landlord will prevail and the tenant will have given up his right to a trial.

If a tenant cannot get a lawyer in time to answer a complaint, he should make an effort to prepare an answer himself by stating whether he agrees with or denies the statements in each paragraph of the complaint. The tenant should take it paragraph by paragraph. When he is through answering the complaint the tenant can tell his side of the story, as <u>briefly</u> as possible. He should make two copies, give the original to the court listed at the top, send a copy to the landlord's attorney, and keep a copy for himself. He will then be notified of the court date. He should thereafter try to find a lawyer.

5. <u>Trial and Judgment</u>

The next part of the process is the trial and the judgment. The tenant is sent a copy of the judgment. Usually the judge will state his decision in court; then a document will be made up reflecting the judge's ruling. If the tenant has been evicted, the judgment will order him to move out. If the tenant does not move out, it will order the sheriff to move him. It is legal for the sheriff to move out the tenant the <u>same day</u> that the trial was held. The judgment will also order the tenant to pay the landlord any money owed him, including treble damages.

If the tenant has a good defense to the landlord's eviction lawsuit, the tenant may win and be allowed to stay. In

that case the landlord would probably be ordered to pay the tenant's expenses, including his attorney's fee.

6. Possession Bond

A new Utah law gives the landlord a more expeditious tool to remove a non-paying or non-complying tenant. If the tenant answers the summons and complaint as previously discussed, he may be served with more papers. These papers would tell the tenant that the landlord has posted a **"plaintiff's possession bond."** This means that the landlord has begun a legal process that speeds up the eviction. Because this law is new, it is difficult to know how it will work in practice. Essentially the tenant must either move, post a similar bond or request a hearing within six days of receiving notice of the plaintiff's bond. (The plaintiff is the person who is suing; here it is the landlord. The defendant is the person being sued; here, the tenant.) If the tenant receives notice of such a bond, he should read the papers carefully and call a lawyer. Otherwise the sheriff could evict him in six days. The idea behind the plaintiff's possession bond is that the landlord may think that the tenant has no valid defense to the eviction. He wants the tenant out of the rental property very quickly. Therefore, he tells a judge what is happening and the basis for his claim against the tenant. He then asks the judge to set an amount of bond for the landlord to post. This amount should cover the tenant's expenses if the landlord is wrong and the tenant is able to show that he has the right to remain in possession.

C. Miscellaneous

1. Roommates

Disputes between roommates do not fall under landlord/tenant laws, but they cause a lot of distress. Essentially, if both roommates are on the lease or rental agreement or are parties to the oral agreement, each has as much right as the other to possession of the premises. If two roommates "love" their apartment but can no longer stand each other, and each is living up to his or her part of the bargain, the law will not award "custody" of the dwelling to one over the other. If one roommate was carrying the total financial burden or doing all the work, the industrious one might have more of a claim to the apartment. However, that dispute is between the roommates and does not directly affect the landlord.

If, however, one roommate moves out, the remaining one is obligated to pay the landlord the total amount of the rent due, not just one-half. Even if the landlord knew when the roommates moved in together that their agreement was to share expenses equally, the landlord has the right to hold the roommates jointly and severally responsible for the rent. When a landlord rents to two or more roommates he is renting to them all (jointly)

and to each one individually (severally). It is often very upsetting to a person whose roommate has moved out to learn that the landlord still expects full rent.

2. **Rental Agencies**

If a person is looking for a place to rent, undoubtedly he will see advertisements from rental agencies. Before paying their fee, he should ask what their services are. Many people have paid fees to these agencies only to be handed lists of apartments for rent which are available in the daily newspaper for much less money.

3. **Landlord's Lien**

A lien is a legal claim against someone's property. An example of a lien against real property (land) is a mortgage. When a person borrows money to buy a car, the bank has a lien on the car until it is paid for. This is an example of a lien against personal property (goods other than real estate).

When a tenant moves into an apartment, his landlord automatically has a claim or lien on the tenant's personal property if the tenant should fall behind in rent or cause damage to the apartment. However, the landlord cannot just walk into the apartment and take the tenant's property. He must get a court order which allows him to take and hold some of the property until the tenant pays what is owed. If the tenant cannot pay, the landlord may be allowed to sell the property. Property the landlord <u>can</u> take includes televisions, stereos, vacuum cleaners, small appliances, recreational equipment, etc. Property he <u>cannot</u> take includes refrigerators, stoves, sewing machines, laundry equipment, clothing and most furniture.

4. **Hotels and Motels**

Hotels and motels and other temporary lodging facilities do not come under the landlord/tenant laws. People who manage or own such places are allowed to take and hold a customer's belongings <u>without</u> a court order when the customer owes them money. They are allowed to do this because the customer would be gone before they could get the court order.

Many places that call themselves motels rent by the week or the month. Sometimes a court will hold the owners of such places to the landlord/tenant laws. The court would look to see if the services were more like those of a motel or an apartment. For example, are kitchen facilities available, are maid services provided, are linen and towels provided, is the customer expected to pay daily, weekly, or monthly? If the nature of the relationship is more of a landlord and tenant than an innkeeper and guest, the owner will be expected to follow the appropriate laws.

5. **Public Housing**

Public housing is for low income people, and tenants in public housing should not be paying more than twenty-five to thirty percent of their income for rent. The federal government subsidizes landlords so they can rent housing to low income people and still be assured a profit. Local housing authorities in Utah administer public housing and should be contacted for applications. However, waiting lists are so long in some parts of the state that people must wait one or two years before housing is available.

The Housing Division of the Utah Department of Community and Economic Affairs can give assistance to people who want to set up a housing authority.

There are many different public housing programs. Sometimes the housing authority will build and manage their own units. Sometimes they will contract with a tenant and a private landlord in a three-way agreement. Under such an agreement, the tenant rents from the landlord and pays him the usual twenty-five to thirty percent of his income. The housing authority makes up the difference between the tenant's payment and the fair market rent. There is a limit on what the housing authority will pay. Some people think that poor people are living in luxury under these programs. That is not true. Are any of these programs available in Utah?

Problem

The following problem is posed for discussion. There are no right or wrong answers. In the Big City there are housing codes which require all rental housing to have certain facilities, including hot and cold running water and bathing facilities in each unit. Slumlord owns many old houses and buildings which are in the old and run-down part of town. Many low income people rent from Slumlord. The housing code inspectors of Big City inspected one of Slumlord's buildings and found that the units did not have bathtubs or showers. The residents were filling portable tubs, taking sponge baths, going elsewhere to bathe or not bathing. The landlord was ordered to install showers or tubs or to close the building to occupancy. The owner said that he could not afford to do that; the property was not worth it. If he installed bathing facilities, he would have to raise the rent significantly, the tenants would move and no one else would rent the units. The building would be vandalized and the new tubs stolen. On the other hand, if the building were shut down he would be deprived of his little rental income unfairly. Another problem is that the people who live there cannot afford more than the $50-$80 per month they pay. Where would they find a place to live? Local public housing has a two-year waiting list.

Should the city force Slumlord to install bathing facilities? If it does, the building will close and twenty

families will be on the streets looking for housing. Which is more important: Enforcing the housing codes or housing people? Are there any other solutions?

III. MOBILE HOMES IN MOBILE HOME PARKS

In the past, mobile home owners who rented spaces in parks were subject to the same landlord/tenant laws as people who rented apartments. However, renting a space on which to put a dwelling is different and has different problems than renting a dwelling in which to live. Moving a mobile home is very expensive; it can cost in excess of $2,000. It entails disconnecting all utilities, reconnecting them at the new location and taking down and putting up awnings and skirting. Renters of mobile home spaces became concerned because they could be given a fifteen-day no-cause eviction notice. Park rules and regulations were often changed sometimes at great financial expense to the mobile home owners. Often leases were unavailable or offered little protection. Therefore, park residents combined their efforts and lobbied for favorable legislation which passed in 1981.

The new mobile home law prohibits no-cause evictions in parks. Evictions are only allowed for nonpayment of rent, noncompliance with lease terms and rules, and for creating a nuisance or danger in the park. The residents now must be given six days notice of any change in rules and/or increases in rent.

However, if a resident gets behind in his rent, a three-day notice can be served and the remaining eviction process followed. The legal process followed after the notice is the same eviction procedure discussed earlier. It is more difficult to "evict" a mobile home than it is to evict a person. Therefore, the process, though the same, often takes longer. Park owners with the proper court authorization can have a mobile home moved out of the park. If it were taken to another park and set up, the home owner would be responsible for those costs. If the mobile home were taken and left in a lot somewhere, that cost would be added to the judgment against the owner of the mobile home.

IV. HOME OWNERSHIP

A. Introduction to Home Ownership

The notion of ownership of real property -- in particular home ownership -- is somewhat misleading. The rights that a typical home purchaser acquires in a home really are a mixture of rights and obligations, many of which are shared with a financial institution such as a bank, savings and loan, mortgage company, or a private individual. In some arrangements, the purchaser acquires a deed and title to the home. In other instances, the arrangements may call for the deed to be conveyed and title transferred only after the satisfaction of a series of contractual obligations, including the payment over time of the purchase price.

The state of Utah is no different than other places around the country in many respects. The use of mortgage financing is prevalent. That should not, however, be the basis for creating the image of the melodramatic "Black Bart" skulking the suburbs and subdivisions of Utah County or Salt Lake County, or preying upon the helpless farm widow in rural Utah counties. The lender who takes a mortgage on the purchaser's home as security for repayment of the loan is interested in profiting from his lending business. However, without the use of the mortgage or similar instruments, home owners would primarily be the wealthy.

Contemporary financing instruments, like the mortgage, the trust deed and the real estate contract (discussed in more detail below) make it possible to enjoy the advantages of owning a home without the need to wait many years to accumulate the necessary funds to make a cash purchase. Using those instruments, a purchaser can exercise all of the rights of ownership. The principal advantage of such ownership is that any appreciation in the value of the home becomes an asset of the owner. In the rental situation, the tenant does not benefit from such appreciation. (That appreciation in value above the mortgage obligation on the home is sometimes referred to as the **owner's equity**.)

Another principal difference between renting and owning is that certain obligations associated with ownership become the responsibility of the owner. It is an advantage because taxes assessed upon the home and paid by the owner are deductible expenses for federal income tax purposes. Likewise, a portion of the regular mortgage payments -- that part which is interest on the loaned money -- is also a deductible expense. Federal tax reform has made this the only type of interest that is deductible. The tax laws even allow interest on loans that are second mortgages to be deducted. Thus, "home-equity" loans are offered by most lending institutions. Even though the rental payments likely are used by the landlord to pay the property taxes, and possibly, the interest on his mortgage of the leased property, no deduction for income tax purposes is allowed to the lessee or tenant.

B. The Process of Buying a Home

1. Finding Your Home

After making the decision that home ownership is desired and that sufficient resources (this includes a careful assessment of initial costs, including down payment, closing costs, and moving expenses, and of the continuing obligations and cost of such ownership, including taxes, insurance, maintenance, mortgage service, furnishings, utilities, landscaping, etc.,) are available, a prospective buyer yet has the most exciting and frustrating experience remaining -- that of finding the home of one's dreams and desires.

The search for a home can be done by the buyer himself or through the use of brokers and agents who are in the business of bringing buyers and sellers together. Utah requires that people who for compensation arrange sales, leases, and other transfers of real property (like homes) be licensed. Before a person may obtain such a license, he must meet certain educational and testing requirements. Those people who satisfy such minimal requirements may have a salesman's license issued only under the sponsorship of a licensed broker. A broker may obtain a license only after gaining additional education and experience. The issuance of a sales or brokers license is not a guarantee of competence, and a prospective seller or buyer should be selective. Although the commission for such services comes from proceeds of the sale, a wise seller will price his home to cover the commission. Both the buyer and seller should demand the best in services from the salesman (also known as "agent") and the broker through whom they work.

In addition to the general knowledge and expertise that the broker and agent bring to a search for a home, because of the use of listing contracts, they have an additional advantage over the freelancing private buyer. A listing contract is simply a seller's contract with a broker or agent that the broker or agent will sell the home on behalf of the seller for a commission. There are three general types of listing agreements. First, an **"exclusive listing"** agreement provides that the seller will only sell through the broker with whom the listing agreement is signed. This arrangement does not allow the contracting sellers to arrange a sale on his own or through any other broker or agent. Second, a **"general listing"** agreement allows the seller, in good faith, to consummate sales with or without the use of the agent or broker with whom his home is "listed."

Finally, the **"multiple listing"** agreement allows the use of many different agents and brokers in the sales endeavor. The agent who "lists" the property is entitled to a specified portion of the commission generated by any sale. Any agent or broker who arranges the actual sale is also entitled to a portion of the commission from the sale. Under this form of listing, the brokers and agents participate in a multiple listing service which publishes a book on a regular basis. Properties listed under a multiple listing contract are listed in the book and the brokers and agents then have access to information on all such properties. The multiple listing book is not available to the general public, putting the freelancing purchaser at a distinct disadvantage. The freelancing purchaser, however, should not be discouraged. Many people attempt to sell on their own -- a glance at the classified section of the newspaper will reveal a number of such adventuresome sellers -- and a drive through the area where the buyer would like to live should reveal many homes for sale by the owner.

2. Striking the Bargain

Once the buyer has located a home in which he is interested, he must negotiate with the seller for the purchase of the home. Although a broker or agent might have brought the buyer and the seller together, the contract specifying the terms for the purchase of the home must still be negotiated. The qualities of a good horse trader are invaluable at this point. Part of being a good horse trader is to acquire all of the information and data both about one's own needs and about the needs, objectives and desires of the seller. The bargaining process consists of the working up of an offer by the buyer. An agent may assist in putting together the terms and conditions of the offer. A buyer must consider such matters as the amount of the down payment, the method of financing (including its availability), the conditions or transfer of ownership and possession, and what furnishings and fixtures will be included in the home. (A buyer cannot assume that the dishwasher will stay, for example.) A buyer should not be afraid to ask questions. If an agent or the seller does not prove to be helpful or reliable, the buyer should make independent reasonable investigations and inquiries. Parties and sources who cannot legally or ethically supply information to the buyer generally will so inform him.

Once the essential terms of the first attempt at an offer have been decided, the purchaser still must put the offer in writing and present it to the seller. In Utah, the much used **"Earnest Money Sales Agreement"** is a standard form used both to present and accept offers to purchase. (See pages 158 - 161 for a sample form.) The Earnest Money Sales Agreement is a standard form. Its usefulness is limited to simple, customary transactions. Its protection for the offeror and the offeree are minimal. The Earnest Money form will be adequate for a straightforward transaction which includes a set purchase price to be paid in part by down payment and the remainder by a financing agreement. The purchaser must remember that the Earnest Money is an offer to contract on the terms (or lack thereof) presented in the Earnest Money. Thus, if the offer is "accepted" (if the seller likes the terms of the offer and signs the Earnest Money as approving and accepting), a binding obligation exists on both parties to carry out the terms of the agreement. In other words, the purchaser must purchase and the seller must sell in accordance with the terms set forth in the accepted Earnest Money.

Once the seller accepts, if the buyer fails to go through with the purchase on the conditions specified, he breaches the contract and is liable to the seller for damages. In most instances, the seller will simply retain the "earnest money" which was presented with the offer. The amount of the earnest money deposit, then, is subject to forfeiture if the buyer fails to perform -- it is, in fact, money to show the earnestness of the purchaser. Both buyers and sellers should be aware that the terms

of the offer (Earnest Money Sales Agreement) are not without conditions. The purchaser should provide conditions on performance which are tied to his ability to obtain financing. It is wise to make the offer on terms which provide that the purchaser's inability to obtain financing on certain conditions will excuse performance of the contract without a forfeiture of the earnest money. (Whether or not agreed to, the buyer must use good faith efforts to obtain financing.)

The buyer should also be aware that the seller may reject the earnest money offer and provide his own offer, known as a counteroffer. The purchaser is then placed in the shoes of evaluating the terms of the proposed counteroffer and either accepting or rejecting them. This process of offer, rejection and counteroffer may continue for several rounds before an actual agreement is reached -- or, in some instances, not reached.

In every case, both parties should be certain to address essential details such as price, payment terms, time for performance, and description of property, to insure that they have a binding agreement.

3. <u>The Transaction Structure -- Financing Methods</u>

The purchaser and seller may have available a variety of methods for structuring the purchase of the property.

a. <u>The Uniform Real Estate Contract</u> A very common instrument in Utah for structuring real estate sales is the Uniform Real Estate Contract. (See pages 162 - 165 for the Uniform Real Estate Contract approved by the Utah Real Estate Commission.) It is, in effect, an installment sales contract for real property. The seller agrees to allow the buyer to pay the purchase price of the property over time in installments. (The terms of the installment obligation may differ substantially, but the standard form is to provide for a down payment with regular monthly payments in a set amount. The terms include the payment of interest on the principal amount of installment obligation.) The seller agrees that upon payment in full of the purchase price, with interest and other charges, the seller will convey to the buyer a deed (title) to the property. Until such time, the seller retains title but grants the purchaser all rights of use and possession which a title holder would expect to have. The buyer, of course, also agrees to assume all of the duties of paying taxes, assessments, and to maintain the property.

The greatest abuse of this instrument is its use in complex and unsuitable situations. Its use must be carefully evaluated from both the buyer's and the seller's viewpoints. One rather questionable practice is the tiering of Uniform Real Estate Contracts, that is, where one purchaser on a contract then sells to another purchaser on the contract, who then sells to another

purchaser on contract and so on. Unraveling rights, equity interests and obligations in such circumstances is very difficult.

b. Conventional Instruments -- Mortgage and Trust Deed The more conventional methods of financing the purchase of a home are the mortgage and the trust deed. Both instruments are agreements by which the buyer of the property grants an interest in the property as security for payment of the funds loaned to purchase the property. The standard language of both the mortgage forms and trust deed forms suggest that the borrower/buyer is granting and transferring title in his property to the financing institution to secure payment of the loan purchase price. However, Utah courts have held that these instruments do not actually transfer title, but simply create a lien on the property.

A mortgage requires only two parties: the mortgagor (the borrower/buyer) and the mortgagee (the lender). A trust deed requires three parties: the trustor (the borrower/buyer), the beneficiary (the lender) and the trustee (a third party who holds an interest in the property for the benefit of the beneficiary). Only certain persons and entities can serve as trustees. They include attorneys admitted to practice in Utah, banks, and title companies. In connection with the mortgage and the trust deed, the buyer signs a promissory note which obligates him to repay the loan of the purchase money. The mortgage or trust deed states that it is given to secure the buyer/debtor's performance and payment of the obligations under the promissory note. That simply means that the buyer/debtor agrees that if he fails to make payments as required (usually monthly installments of principal and interest), the mortgagee or beneficiary may bring about a sale of the buyer's interest in the property. The proceeds of such a sale would be applied to pay the promissory note obligation. As with the Uniform Real Estate Contract, all of the rights of ownership, including possession, are transferred to or retained by the buyer.

Recently, because of the continuing rise of mortgage interest rates, alternative forms of mortgage and trust deed financing have developed. These financing arrangements have such innovations as monthly payments which gradually increase in amount over the term of the mortgage or payments which are tied to the variations in the prevailing interest rates. Some mortgage and trust deed instruments are tied to promissory notes which call for monthly payments for a certain period, and then the entire remaining balance (balloon payment), in five years, for example. The purpose of such alternative financing is to provide for a method by which the lending institution can give a lower interest rate now (the lender does not have to fix the mortgage rate now to cover the risk of rising interest rates in the future) or to provide for lower monthly payments now with increases somewhat in line with the future earning power of the borrower. A balloon payment requires that the borrower refinance at the prevailing interest rate -- unless he is able to come up with the cash from some other source.

In Utah, some financing has been available at lower than market interest rates. The Utah Housing Financing Agency has had low interest funds available for certain income level borrowers. The money which such agencies have available is less expensive because they issue bonds which yield tax-free interest income. These funds have traditionally been to facilitate lower and moderate income home purchases.

c. Assuming Existing Mortgage Obligations If the mortgage or trust deed agreements allow (or with permission from the lender), existing mortgages may be "assumed." That is, instead of paying money to the seller who then pays off the mortgage debt, the buyer may (as part of the purchase arrangement) simply agrees to pay the mortgage debt. For both seller and buyer, this is a potentially useful practice -- especially with an older low interest mortgage. However, it is a complex legal matter and competent legal advice should be obtained.

4. Building a Home

In some instances, a purchaser may wish to purchase a lot and have a home built to specification. Or, as an alternative, the purchaser may find a lot and convince a building contractor to acquire it, build a home thereon, and then convey the finished home to the buyer. In the latter instance, before signing any Earnest Money or other type of purchase contract, the buyer should make certain that the lot is free of all liens and other claims (as hereafter explained, a preliminary title report may be obtained) and he should have a judgment search made with respect to the contractor.

When a buyer is purchasing property in a new subdivision, care should be taken to see that all of the necessary "off-site" improvements (curb, gutter, roads, lighting, sewer, utilities, etc.) are made or that sufficient provision for making them exists. Cities in this state have been known to deny building and occupancy permits because of the failure of a developer or subdivider to complete a subdivision with all required improvements. If the subdivider or developer is out of business or has no money, property owners in the subdivision may, by pure necessity, have to come up with funds to complete the improvements.

C. Closing the Transaction -- Becoming an "Owner"

In every contract for the purchase and sale of a home, (except the Uniform Real Estate Contract type transaction), the moment of truth will come when the buyer and seller perform their obligations, i.e., the buyer will deliver or cause to be delivered the necessary funds (his down payment and any borrowed funds) and the seller will deliver a deed (title) and possession to the property. The process for "closing" the sale is not complex. It may involve the services of an "escrow" agent who will hold the

various funds and signed deeds for the parties until all required payments and signatures are obtained. For example, the escrow agent may receive from the buyer the funds with instructions to hold them until a signed deed is delivered. When the deed is delivered in satisfactory form, the escrow agent will be authorized to give the money to the seller and the deed to the buyer.

In Utah, three different kinds of deeds are available for the purpose of transferring the seller's title. If the seller gives a **"warranty deed"** the purchaser receives title along with the seller's "warranties" that the title is clean, i.e., no conflicting claims, liens, mortgages or other clouds exist on the title and that if they do, the seller will get rid of them. Under a **"quit-claim deed,"** the seller gives no warranties as to the state of the title. Indeed, the seller may not have any title at all. A quit-claim deed simply gives "whatever the seller's interest is." A **special warranty deed** is somewhere in between. With that deed, a seller warrants that the property is free of claims or encumbrances created by the seller.

Sometimes, a seller's warranties may not be worth much. For example, if the seller is without the financial resources to clear an encumbrance or cloud on the title, his warranty would be meaningless. Real estate transactions in this state almost always are accompanied by requirements that the seller provide **"title insurance."** As the term implies, "title insurance" is the agreement by a company (for a premium) to insure that the state of the title is as represented by the seller. Prior to the closing of the transaction, the title company will provide a preliminary title report which is both a commitment by the insurance company to insure the title and a report of any "defects" or "clouds" on the title which may need to be cleared before the seller can convey a clear title. A buyer should carefully examine the report and make certain that provision exists for satisfaction and release of any unwanted clouds.

At the closing, the buyer should expect to be supplied with certain disclosures and statements. These disclosures and statements include information relating to the loan and the mortgage or trust deed. A **"disclosure/settlement statement"** shows the sources of all the funds and where they are applied, including payment of closing costs, commissions for the real estate agent(s), the premium for the title policy, and pro-rating of taxes. (A typical disclosure settlement statement is included on pages 166 - 167.) The buyer will sign the promissory note, the trust deed or mortgage, and will acknowledge by signature all of the disclosures and statements regarding disposition of funds. The buyer will also get the deed to the property.

D. Owning, Selling and Losing a Home in Utah

Once a buyer has closed the purchase of a home, additional concerns exist. First, because of the risk of loss due to fire, theft, vandalism, etc., and because of the potential for liability to other persons for injury on or around the homeowner's property, adequate **homeowner's insurance** should be obtained and maintained. The purchase contract and/or financing agreement usually will require that the buyer maintain such coverage. Second is the **property tax obligation.** Each year, the county assesses both real and personal property. Such property is assessed at a specified percentage of its fair market value and the tax rate is applied to that amount. Under Utah law, the taxpayer has the duty to establish that an assessment is unfair. Payment of taxes is to be made on the 30th day of November each year.

Because of the failure to pay premiums on homeowner's insurance or failure to pay property taxes when due could have resulted in loss of the lender's security in the property, it was a common practice to require that borrowers pay, along with their monthly installments of principal and interest, an amount which covered payment of property taxes and insurance premiums. Those "reserve" accounts became the subject of consumer-oriented legislation by the Utah State Legislature. With certain important exceptions, that legislation requires the payment of interest on any mandatory reserve account held by a lender in connection with residential mortgages. If the borrower voluntarily elects to have a reserve account (essentially a forced savings account to cover taxes and insurance premiums), the requirement that the lender pay interest thereon is lifted.

1. Selling the Home

When the former buyer is ready to sell, he should carefully review the options for arranging the sale of his home. He should look at the available listing contracts, and perhaps the possibility of tailoring a special contract. Shopping for the right listing agent is important. In addition, recent Utah legislation allows homeowners to sell their interests in the home while leaving the first mortgage intact. Prior to the enactment of legislation in 1981 relating to the assumption of mortgages and trust deeds, significant litigation ensued throughout the country over the enforceability of **"due-on-sale"** clauses in mortgages and trust deeds. These clauses simply provided that the lender had the option of accelerating payment of the underlying installment loan if the borrower sold or agreed to sell his property. Without such clauses, the borrower/seller could locate a buyer and have the buyer purchase the seller's equity and assume his obligations on the original note and mortgage. The practical effect of such an arrangement is to preserve for the subsequent buyer an earlier negotiated interest rate. The Utah statute invalidates due-on-sale clauses in trust deeds and mortgages on owner-occupied residential real property of up to four units.

The statute eliminates the right of a lender to accelerate payment of the loan for the reason that the borrower is selling the property, as long as the borrower complies with certain notice requirements relating to an assumption by the new buyer of the original loan obligation. If such notice is given, the lender cannot refuse to allow the assumption, unless there is a material adverse effect on the likelihood of payment or if the assuming party refuses to pay a minimal assumption fee and refuses to pay a minimal upward adjustment of the interest rate. In those cases, or if the notice is not given, the lender has the right to accelerate.

Subsequent federal legislation has all but eliminated the effectiveness of the Utah legislation and the due-on-sale clause has renewed vitality.

2. Failing to Pay the Mortgage or Other Debts

What occurs if the borrower fails to make the monthly payments required under the Uniform Real Estate Contract, mortgage or trust deed? The answers differ depending upon which instrument has been used.

a. Uniform Real Estate Contract A seller (lender) under a Uniform Real Estate Contract traditionally had three alternative remedies or rights to assert if the purchaser fails to make the required payments. First, the contract purports to grant a right of "forfeiture." Theoretically that means that the seller can simply declare that the purchaser has forfeited any claim to the home. Practically, there has been much litigation over the use of that right. It is not "self-executing." That is, the seller's declaration of forfeiture does not remove the buyer's claim to some interest in the property, nor does it result in his moving out. Usually, the seller must institute a judicial action. There have been pitfalls in this area and forfeiture is not a favored remedy.

b. Mortgage A mortgage is a well-established instrument that provides for the acceleration of the installment debt and for bringing a lawsuit to foreclose the buyer's interest in the property. Essentially, the lender files a lawsuit naming the buyer/debtor as defendant and also naming any other parties who claim an interest in the property. The lender asks the court to enter judgment that the debt is delinquent, that the amount is owing, that all of the interests of the defendants be foreclosed and quieted, that the property be sold at public auction and that the money received at the sale be applied against the expenses of the sale and then against the debt owing to the lender. The actual sale is conducted by the sheriff's office, and a purchaser at the sale receives a certificate from the sheriff that indicates that after six months he can obtain a sheriff's deed. During the six-month period the buyer/debtor or any of the defendants may "redeem." That is, by paying the purchaser at the sale, the amount bid at the sale plus six percent, the buyer/debtor can get the property back.

c. Trust Deed The trust deed provides two possible methods of foreclosure. The beneficiary (lender) may direct the trustee to foreclose the trust deed as though it were a mortgage. In that case, the six-month redemption period is available. Also, any time before the entry of the court's judgment decreeing a foreclosure sale, the buyer/debtor can "reinstate." That means that he can pay all of the past due installments, any costs, expenses and attorneys' fees of the lender and have the loan continue as though no default had occurred.

Alternatively, state statutes provide for a right of sale without use of the court. To exercise that right, the trustee must give and record a notice of default (a simple statement which tells that default has occurred) and a notice of sale. The trustee must send a copy of the notice of default to the buyer/debtor (and any other parties who record a request for notice). For three months after the notice of default is recorded, there is a right to "reinstate," as described above. After the three months pass, the notice of sale is recorded, sent, published in the newspaper for a certain period of time and posted on the property and in other places. Until the date of the actual sale, the buyer/debtor can pay off the loan with all of the costs and expenses and save his home. Once the sale has taken place, the buyer/debtor has no right in the property -- he is "foreclosed."

d. The Judgment Lien A home purchaser may have his property foreclosed in connection with a debt that is not related to his mortgage or trust deed on the property. For example, if the purchaser has a credit card debt of $300.00 which he fails to pay, a judgment, by law, will become a lien on his home. That lien may be foreclosed by use of an execution sale. The six-month redemption right applies to such an execution sale. Under Utah law, the sale of the property may be prevented if the purchaser files a homestead election at any time before the sale.

APPENDIX

ORGANIZATIONS TO KNOW -- CHAPTER SIX

Apartment Association of Utah
1935 South Main, Suite 406
Salt Lake City, Utah 84115
Phone: 487-5619
(This group of apartment owners has a handbook of laws for apartment owners, forms for evictions, etc. It is a good organization for owners to know.)

Check with your local charitable agencies and churches. These groups often are involved with housing in some way.

Help in Repairing, Rehabilitating or Maintaining Housing

Assist, Inc. (Emergency Home Repair)
218 East 500 South
Salt Lake City, Utah 84111
Phone: 355-7085

Columbus Community Center
Chore Services (for over 60)
2766 South Main
Salt Lake City, Utah 84115
Phone: 487-0377

Community Services Council
212 West 1300 South
Salt Lake City, Utah 84115
Phone: 486-2136

Division of Community Development
324 South State Street, Suite 500
Salt Lake City, Utah 84111
Phone: 538-8722

Neighborhood Housing Service
(Serves: 250 South to 950 South and from 250 West to Redwood Road)
1268 West 500 North
Salt Lake City, Utah 84116
Phone: 539-1590

Redevelopment Agency of Salt Lake
City and County Building Room 418
451 South State Street
Salt Lake City, Utah 84111
Phone: 535-7240

Office of Energy Services
Division of Community Development
324 South State, #230
Salt Lake City, Utah 84111
Phone: 538-8690
Toll free: 1-800-662-3633

Contact your local County Commission or your local Housing Authority for housing rehabilitation assistance if you have a low income.

Organizations You Can Call When You Need Help or Information

Crossroads Urban Center
347 South 400 East
Salt Lake City, Utah 84111
Phone: 364-7765

Utah Issues Information
1385 West Indiana Avenue
Salt Lake City, Utah 84104
Phone: 521-2035

Community Action Programs (CAP): Weatherization Programs for low income people

Salt Lake CAP
764 South 200 West
Salt Lake City, Utah 84101
Phone: 359-2444

Neighborhood Centers
Northwest Community Action Program
1300 West 300 North
Salt Lake City, Utah 84116
Phone: 359-8741

South County Community Action Program
8446 South 340 West
Midvale, Utah 84047
Phone: 255-3516

South Salt Lake Community Action Program
176 West Burton Avenue
South Salt Lake, Utah 84115
Phone: 486-4363

West Valley City Community Action Program
3060 South Lester
West Valley City, Utah 84119
Phone: 972-6661

Mountainlands CAP
257 East Center Street
Provo, Utah 84606
Phone: 373-8200

Ogden Area CAP
3159 Grant Avenue
Ogden, Utah 84401
Phone: 399-9281

Help in Finding Low-Income Housing

Housing Outreach Rental Program (HORP)
764 South 200 West
Salt Lake City, Utah 84101
Phone: 359-2444

Information and Referral Center for Human Services
212 West 1300 South
Salt Lake City, Utah 84115
Phone: 487-4716

Housing Authorities

(Provide rent subsidies and/or help with housing problems for low income people)

Housing Authority of Carbon County
251 South 1600 East, #2647
Price, Utah 84501
Phone: 637-5170

Davis County Housing Authority
352 South 200 West
P. O. Box 328
Farmington, Utah 84025
Phone: 451-2587

Emery County Housing Authority
P. O. Box 551
Castle Dale, Utah 84513
Phone: 381-2902

Fort Duchesne-Ouray Indian Housing Authority
Ute-Ouray Reservation
Fort Duchesne, Utah 84026
Phone: 722-4656

Ogden Housing Authority of the City of Ogden
2650 Washington Blvd., Suite 103
Ogden, Utah 84401
Phone: 629-8307

Provo City Housing Authority
650 West 100 North
Provo, Utah 84601
Phone: 374-1331

St. George Housing Authority
975 North 1725 West
St. George, Utah 84770
Phone: 628-3648

Salt Lake City Housing Authority
1800 South West Temple, #204
Salt Lake City, Utah 84115
Phone: 487-5407

Salt Lake County Housing Authority
1962 South 2nd East
Salt Lake City, Utah 84115
Phone: 487-5453

Utah County Housing Authority
257 East Center Street
Provo, Utah 84601
Phone: 373-8333

Emergency Housing

Contact your local Community Action Program or your County Information and Referral Agency.

Traveler's Aid Society (Referrals to shelters)
210 South Rio Grande
Salt Lake City, Utah 84101
Phone: 328-8996

Utah Department of Social Services
Office of Community Operations
(Consult local phone directory)

In Salt Lake County: Homeless Shelters

Men's: 359-1739
210 South Rio Grande (440 W.)

Single Women's: 359-1807
210 South Rio Grande (440 W.)

Family: 359-4142
210 South Rio Grande (440 W.)

Merillac House: 355-4609
(Serves single women and women with children)

Rescue Mission: 355-1302
(Serves men only)
463 South 400 West

Rescue Haven: 521-5925
(Serves women and children)
1165 South State Street

Y.W.C.A. Shelter: 355-2804
(Serves abused women and their children)
322 East 300 South

Legal References

Utah State Bar Referral Services
645 South 200 East
Salt Lake City, Utah 84111-3834
Phone: 531-9075

The Lawyer Referral Service will give you the names of two lawyers in your area who will consult with you for one-half hour for a fee of $15.00.

Landlord/Tenant Mediation Service
Utah Legal Services
124 South 400 East
Salt Lake City, Utah 84111
Phone: 328-8891
(Provides services to low income landlords and tenants of Salt Lake County)

Utah Legal Services Offices

CEDAR CITY (Serves Southwestern Utah)
216 South 200 West
Cedar City, Utah 84720
Phone: 586-2571
Toll free: 1-800-662-1772

OGDEN (Serves Weber, Cache, Morgan, Rich, Box Elder, north half Davis County)
550 24th Street, #300
Ogden, Utah 84401
Phone: 394-9431
Toll free: 1-800-662-2538

PROVO (Serves Utah, Juab, Wasatch and Southeastern Utah)
455 North University Avenue, #100
Provo, Utah 84601
Phone: 374-6766
Toll free: 1-800-662-1563

SALT LAKE CITY (Serves Salt Lake, Tooele, Summit and south half Davis County)
124 South 400 East
Salt Lake City, Utah
Phone: 328-8891
Toll free: 1-800-662-4245

SENIOR CITIZENS
Contact your local legal services office, or call
Toll free: 1-800-662-4245

MIGRANT FARMWORKERS
Contact the Ogden or Salt Lake City Office of Legal Services

CHAPTER SIX

HOUSING LAW

"Where You Live" Questions and Answers

p. 358. **What laws prohibit housing discrimination in Utah or your community? What state or local agencies enforce these laws and investigate complaints?**

Utah. The Utah Civil Rights Act (Utah Code Ann. Sections 13-71-1 et. seq.) prohibits the practice of discrimination on the basis of race, color, gender, religion, ancestry or national origin in business establishments or places of public accommodation or in enterprises regulated by the state. A person who feels discriminated against should report it to the Utah Attorney General. A lawsuit might be brought by the state to stop the discrimination, or the person who was discriminated against could bring a lawsuit for damages. Anyone who believes he has been unlawfully discriminated against should consult an attorney to be advised of his rights and options.

Local. The local government (city or county) where a person lives may have anti-discrimination ordinances. Call your local government and find out what rights you have under your local laws.

p. 372. **Does rent control exist where you live? If so, how does it operate and how successful has it been?**

Utah has no law permitting rent control.

p. 375. **What is your state's law regarding repairs or warranty of habitability?**

Utah has no law allowing a tenant to make repairs and deduct the cost from his rent. If a tenant does this without permission, he may be evicted for non-payment of rent. However, in 1990, the Utah Legislature enacted a law which does make some progress in giving basic guarantees of habitability. It is called the Utah Fit Premises Act. Although it sets some standards for landlords and renters, it does not have much in the way of "teeth" in its enforcement provisions.

p. 375. **Is there a housing code in your community? If so, what does it cover? Who enforces it?**

Many of the larger urban areas in Utah have codes passed by their local governments as city or county ordinances. These codes are usually enforced by the agency that does the

inspections and the city or county attorney. In rural areas often no such codes exist. There usually are county building inspectors who approve new construction. If not, the builder would be legally responsible to the owner for defects or dangerous conditions in the construction.

p. 377. **What is the law in your community regarding the steps a landlord must take to evict a tenant accused of committing a crime on the rental premises? What steps must be taken if the tenant is in public housing?**

When a tenant commits a crime on the rented premises, but is not in default under the terms of the lease, a landlord may still attempt to evict the tenant. The landlord proceeds in the form of a civil nuisance claim (see Tort Section), arguing that the criminal conduct of the tenant is affecting the health and/or welfare of other tenants and interfering with the right of the tenants to the quiet enjoyment of the premises.

When the tenant is in public housing, the landlord must comply with federal regulations regarding eviction, including mailing notice of all proceeds to the applicable public housing authority.

p. 378. **What is the law in your area regarding security deposits? Is there a limit to the amount that can be required? Does the landlord have to pay interest on the security deposit?**

The Utah legislature passed a law in 1981 regulating deposits (Utah Code Ann. Sections 57-17-1 et. seq.). There is no limit on the amount of deposit a landlord may require. The law does not require a landlord to pay interest on the security deposit. The law requires a landlord to inform you in writing if any of the deposit is non-refundable. When the tenant moves out, the landlord may apply all or a portion of the deposit to the rent owing or damages to the property, but he must state this in writing to the tenant. The landlord must return the full deposit, or a portion with deductions itemized, or a statement why the full amount is being retained, within thirty days of the tenant's moving out or within fifteen days of receiving his new address, whichever is later. If the landlord does not follow these directions, the tenant must sue him in Small Claims court to get his deposit back.

p. 380. **Can tenants sue landlords for injuries or damages to property in Utah? Will courts enforce a waiver of tort liability clause in the lease?**

Utah has no law specifically allowing or prohibiting tenants to sue landlords for injuries or damage to property. Usually landlords are responsible for the maintenance and upkeep of "common areas" on the property. Common areas are those places that all tenants use or to which they have access. Usually a landlord will suggest that the tenant obtain renter's insurance. There are a few specific instances where the landlord may be legally liable for defects in the tenant's area.

Utah courts do not like to enforce waiver of tort liability clauses. Before the clause will be enforced, the court must be certain that the tenant knew what he was signing and the legal implications. If the waiver clause was one of many small print paragraphs or part of a lengthy lease which many tenants do not read, it probably would not be enforced. If, however, the waiver clause was printed in large print with an explanation and initialed by the tenant, it probably would be enforced. Tenants are strongly encouraged to read all conditions of the lease before signing.

p. 386. **Is there an agency in your area that handles tenant complaints? Does it enforce a housing code? If so, how effective is the agency?**

There is no particular agency created to handle tenant complaints in Utah. The Utah Fit Premises Act does provide a procedure which results in a tenant's access to the courts on an expedited basis. In urban areas the health or building departments will investigate complaints about conditions of the dwelling. In other areas tenants may be able to obtain information regarding their rights from the local city or county attorney's office.

In Salt Lake County there is a Landlord/Tenant Mediation Service currently administered by Utah Legal Services, Inc., which serves low income tenants and landlords. Landlords may also get information from the Apartment Owners' Association in Salt Lake City.

p. 387. **Are there any tenant organizations in your community? What do these organizations do? How effective have they been?**

There are no tenant organizations in Utah. Several have been organized in the past ten to fifteen years but none has survived. The tenants of some public housing authorities have organized around their own particular concerns. Mobile home owners have organized an effective group, the Mobile Home Owners Cooperative Foundation, to deal with mobile home park owners.

p. 387. **Does the law in your community allow tenants to make repairs and deduct the cost from rent?**

Utah has no law allowing a tenant to make repairs and deduct the cost from the rent. If a tenant does this without permission he may be evicted for non-payment of rent.

p. 390. **Is there a landlord/tenant court in your community? If so, where is it located, and what procedures does it follow? Is there a legal aid or legal services office in your area that represents tenants?**

There is no housing or landlord/tenant division of Utah courts. Most rental matters are handled in the small claims or circuit courts. Even under the Utah Fit Premises Act, court access is to the circuit or district courts.

Salt Lake County is served by Utah Legal Services, Inc. which does civil law for low income people. Utah Legal Services currently has offices in Salt Lake City, Provo, Ogden and Cedar City.

p. 391. **What is the law in Utah regarding retaliatory evictions?**

Utah law does not address the issue of retaliatory evictions. The Utah Supreme Court has indicated that it might recognize the doctrine prohibiting retaliatory evictions in an appropriate case, but it is dangerous to try to predict how a court will rule.

p. 393. **What types of housing for low-income people exist in your community? Where are the housing units located? What efforts, if any, are made in your community to increase the supply of low-income housing? Are the efforts sufficient to meet the need?**

Many different types of subsidized housing for low-income people exist all over the Salt Lake valley. Many different units for senior citizens, mentally and physically challenged individuals, and families are located in Salt Lake City, Midvale, Sandy, and West Jordan. There is a continual effort to increase the supply of subsidized housing because the number of individuals requiring help increases every year.

p. 395. **Is homelessness a serious problem in your community? How many single individuals and how many people in families are estimated to be homeless? What emergency shelters exist to help these people? Are there programs to help the homeless obtain permanent housing? What are the rules to determine who is eligible for these programs?**

Homelessness is a serious problem in the State of Utah. There are approximately 4,000 homeless individuals and, of those,

about one-third are families. This figure increases yearly by approximately 20%. Existing emergency shelters to help the homeless are listed in the Appendix section of this chapter.

There are a variety of programs available to help the homeless obtain permanent housing. The Utah Housing Authority or any Community Action Program (CAP) would have specific information on how to obtain permanent housing. Addresses and phone numbers for these organizations are listed in the Appendix. To be eligible for permanent housing, an individual must be actively enrolled in a school or a job training program or be employed.

EARNEST MONEY SALES AGREEMENT

Legend Yes (X) No (O)

This is a legally binding contract. Read the entire document carefully before signing.

GENERAL PROVISIONS
(Sections)

A. **INCLUDED ITEMS.** Unless excluded herein, this sale shall *include* all fixtures and any of the following items if presently attached to the property, plumbing, heating, air-conditioning and ventilating fixtures and equipment, water heater, built-in appliances, light fixtures and bulbs, bathroom fixtures, curtains and draperies and rods, window and door screens, storm doors, window blinds, awnings, installed television antenna, wall-to-wall carpets, water softener, automatic garage door opener and transmitter(s), fencing, trees and shrubs.

B. **INSPECTION.** Unless otherwise indicated, Buyer agrees that Buyer is purchasing said property upon Buyer's own examination and judgment and not by reason of any representation made to Buyer by Seller or the Listing or Selling Brokerage as to its condition, size, location, present value, future value, income herefrom or as to its production. Buyer accepts the property in "as is" condition subject to Seller's warranties as outlined in Section 6. In the event Buyer desires any additional inspection, said inspection shall be allowed by Seller but arranged for and paid by Buyer.

C. **SELLER WARRANTIES.** Seller warrants that: (a) Seller has received no claim nor notice of any building or zoning violation concerning the property which has not or will not be remedied prior to closing; (b) all obligations against the property including taxes, assessments, mortgages, liens or other encumbrances of any nature shall be brought current on or before closing; and (c) the plumbing, heating, air conditioning and ventilating systems, electrical system, and appliances shall be sound or in satisfactory working condition at closing.

D. **CONDITION OF WELL.** Seller warrants that any private well serving the property has, to the best of Seller's knowledge, provided an adquate supply of water and continued use of the well or wells is authorized by a state permit or other legal water right.

E. **CONDITION OF SEPTIC TANK.** Seller warrants that any septic tank serving the property is, to the best of Seller's knowledge, in good working order and Seller has no knowledge of any needed repairs and it meets all applicable government health and construction standards.

F. **ACCELERATION CLAUSE.** Not less than five (5) days prior to closing, Seller shall provide to Buyer written verification as to whether or not any notes, mortgages, deeds of trust or real estate contracts against the property require the consent of the holder of such instrument(s) to the sale of the property or permit the holder to raise the interest rate and/or declare the entire balance due in the event of sale. If any such document so provides and holder does not waive the same or unconditionally approve the sale, Buyer shall have the option to declare this Agreement null and void by giving written notice to Seller or Seller's agent prior to closing. In such case, all earnest money received under this Agreement shall be returned to Buyer. It is understood and agreed that if provisions for said "Due on Sale" clause are set forth in Section 7 herein, alternatives allowed herein shall become null and void.

G. **TITLE INSPECTION.** Not less than five (5) days prior to closing, Seller shall provide to Buyer either an abstract of title brought current with an attorney's opinion or a preliminary title report on the subject property. Prior to closing, Buyer shall give written notice to Seller or Seller's agent, specifying reasonable objections to title. Thereafter, Seller shall be required, through escrow at closing, to cure the defect(s) to which Buyer has objected. If said defect(s) is not curable through an escrow agreement at closing, this Agreement shall be null and void at the option of the Buyer, and all monies received herewith shall be returned to the respective parties.

H. **TITLE INSURANCE.** If title insurance is elected, Seller authorizes the Listing Brokerage to order a preliminary commitment for a policy of title insurance to be issued by such title insurance company as Seller shall designate. Title policy to be issued shall contain no exceptions other than those provided for in said standard form, and the encumbrances or defects excepted under the final contract of sale. If title cannot be made so insurable through an escrow agreement at closing, the earnest money shall, unless Buyer elects to waive such defects or encumbrances, be refunded to Buyer, and this Agreement shall thereupon be terminated. Seller agrees to pay any cancellation charge.

I. **EXISTING TENANT LEASES.** If Buyer is to take title subject to an existing lease or leases, Seller agrees to provide to Buyer not less than five (5) days prior to closing a copy of all existing leases (and any amendments thereto) affecting the property. Unless reasonable written objection is given by Buyer to Seller or Seller's agent prior to closing, Buyer shall take title subject to such leases. If the objection(s) is not remedied at or prior to closing, this Agreement shall be null and void.

J. **CHANGES DURING TRANSACTION.** During the pendency of this Agreement, Seller agrees that no changes in any existing leases shall be made, nor new leases entered into, nor shall any substantial alterations or improvements be made or undertaken without the written consent of the Buyer.

EARNEST MONEY SALES AGREEMENT

Legend Yes(X) No(O)

EARNEST MONEY RECEIPT

DATE: _____

The undersigned Buyer _____ hereby deposits with Brokerag
as EARNEST MONEY, the amount of _____ Dollars ($ _____
in the form of _____
which shall be deposited in accordance with applicable State Law.

_____ Received by _____
Brokerage Phone Number

OFFER TO PURCHASE

1. **PROPERTY DESCRIPTION** The above stated EARNEST MONEY is given to secure and apply on the purchase of the property situated at _____
_____ in the City of _____ County of _____, Utah
subject to any restrictive covenants, zoning regulations, utility or other easements or rights of way, government patents or state deeds of record approved by Buyer i
accordance with Section G. Said property is owned by _____ as sellers, and is more particularly describe
as _____

CHECK APPLICABLE BOXES:

☐ **UNIMPROVED REAL PROPERTY** ☐ Vacant Lot ☐ Vacant Acreage ☐ Other _____

☐ **IMPROVED REAL PROPERTY** ☐ Commercial ☐ Residential ☐ Condo ☐ Other _____

(a) **Included items.** Unless excluded below, this sale shall *include* all fixtures and any of the items shown in Section A if presently attached to the property
The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: _____

(b) **Excluded items.** The following items are specifically *excluded* from this sale: _____

(c) **CONNECTIONS, UTILITIES AND OTHER RIGHTS.** Seller represents that the property includes the following improvements in the purchase price

☐ public sewer ☐ connected	☐ well ☐ connected ☐ other	☐ electricity ☐ connected
☐ septic tank ☐ connected	☐ irrigation water / secondary system	☐ ingress & egress by private easement
☐ other sanitary system _____	# of shares _____ Company _____	☐ dedicated road ☐ paved
☐ public water ☐ connected	☐ TV antenna ☐ master antenna ☐ prewired	☐ curb and gutter
☐ private water ☐ connected	☐ natural gas ☐ connected	☐ other rights _____

(d) **Survey.** A certified survey ☐ shall be furnished at the expense of _____ prior to closing, ☐ shall not be furnished
(e) **Buyer Inspection.** Buyer has made a visual inspection of the property and subject to Section 1 (c) above and 6 below, accepts it in its present physica
condition, except: _____

2. **PURCHASE PRICE AND FINANCING.** The total purchase price for the property is _____
_____ Dollars ($ _____) which shall be paid as follows:

$ _____ which represents the aforedescribed EARNEST MONEY DEPOSIT:

$ _____ representing the approximate balance of CASH DOWN PAYMENT at closing.

$ _____ representing the approximate balance of an existing mortgage, trust deed note, real estate contract or other encumbrance to be assumed by buyer,
which obligation bears interest at _____ % per annum with monthly payments of $ _____
which include: ☐ principal; ☐ interest; ☐ taxes; ☐ insurance; ☐ condo fees; ☐ other _____.

$ _____ representing the approximate balance of an additional existing mortgage, trust deed note, real estate contract or other encumbrances to be
assumed by Buyer, which obligation bears interest at _____ % per annum with monthly payments of $ _____
which include: ☐ principal; ☐ interest; ☐ taxes; ☐ insurance; ☐ condo fees; ☐ other _____.

$ _____ representing balance, if any, including proceeds from a new mortgage loan, or seller financing, to be paid as follows: _____

$ _____ Other _____

$ _____ TOTAL PURCHASE PRICE

If Buyer is required to assume an underlying obligation (in which case Section F shall also apply) and/or obtain outside financing, Buyer agrees to use best efforts to assume and/or procure same and this offer is made subject to Buyer qualifying for and lending institution granting said assumption and/or financing. Buyer agrees to make application within _____ days after Seller's acceptance of this Agreement to assume the underlying obligation and/or obtain the new financing at an interest rate not to exceed _____ %. If Buyer does not qualify for the assumption and/or financing within _____ days after Seller's acceptance of this Agreement, this Agreement shall be voidable at the option of the Seller upon written notice. Seller agrees to pay up to _____ mortgage loan discount points, not to exceed $ _____. In addition, seller agrees to pay $ _____ to be used for Buyer's other loan costs.

K. **AUTHORITY OF SIGNATORS.** If Buyer or Seller is a corporation, partnership, trust, estate, or other entity, the person executing this Agreement on its behalf warrants his or her authority to do so and to bind Buyer or Seller.

L. **COMPLETE AGREEMENT — NO ORAL AGREEMENTS.** This instrument constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, warranties, understandings or agreements between the parties. There are no oral agreements which modify or affect this agreement. This Agreement cannot be changed except by mutual written agreement of the parties.

M. **COUNTER OFFERS.** Any counter offer made by Seller or Buyer shall be in writing and, if attached hereto, shall incorporate all the provisions of this Agreement not expressly modified or excluded therein.

N. **DEFAULT/INTERPLEADER AND ATTORNEY'S FEES.** In the event of default by Buyer, Seller may elect to either retain the earnest money as liquidated damages or to institute suit to enforce any rights of Seller. In the event of default by Seller, or if this sale fails to close because of the nonsatisfaction of any express condition or contingency to which the sale is subject pursuant to this Agreement (other than by virtue of any default by Buyer), the earnest money deposit shall be returned to Buyer. Both parties agree that should either party default in any of the covenants or agreements herein contained, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing or terminating this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. In the event the principal broker holding the earnest money deposit is required to file an interpleader action in court to resolve a dispute over the earnest money deposit referred to herein, the Buyer and Seller authorize the principal broker to draw from the earnest money deposit an amount necessary to advance the costs of bringing the interpleader action. The amount of deposit remaining after advancing those costs shall be interpleaded into court in accordance with state law. The Buyer and Seller further agree that the defaulting party shall pay the court costs and reasonable attorney's fees incurred by the principal broker in bringing such action.

O. **ABROGATION.** Except for express warranties made in this Agreement, execution and delivery of final closing documents shall abrogate this Agreement.

P. **RISK OF LOSS.** All risk of loss or damage to the property shall be borne by the Seller until closing. In the event there is loss or damage to the property between the date hereof and the date of closing, by reason of fire, vandalism, flood, earthquake, or acts of God, and the cost to repair such damage shall exceed ten percent (10%) of the purchase price of the property, Buyer may at his option either proceed with this transaction if Seller agrees in writing to repair or replace damaged property prior to closing or declare this Agreement null and void. If damage to property is less than ten percent (10%) of the purchase price and Seller agrees in writing to repair or replace and does actually repair and replace damaged property prior to closing, this transaction shall proceed as agreed.

Q. **TIME IS OF ESSENCE—UNAVOIDABLE DELAY.** In the event that this sale cannot be closed by the date provided herein due to interruption of transport, strikes, fire, flood, extreme weather, governmental regulations, delays caused by lender, acts of God, or similar occurrences beyond the control of Buyer or Seller, then the closing date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fifteen (15) days beyond the closing date provided herein. Thereafter, time is of the essence. This provision relates only to the extension of closing dates. "Closing" shall mean the date on which all necessary instruments are signed and delivered by all parties to the transaction.

R. **CLOSING COSTS.** Seller and Buyer shall each pay one-half (½) of the escrow closing fee, unless otherwise required by the lending institution. Costs of providing title insurance or an abstract brought current shall be paid by Seller. Taxes and assessments for the current year, insurance, if acceptable to the Buyer, rents, and interest on assumed obligations shall be prorated as set forth in Section 8. Unearned deposits on tenancies and remaining mortgage or other reserves shall be assigned to Buyer at closing.

S. **REAL PROPERTY CONVEYANCING.** If this agreement is for conveyance of fee title, title shall be conveyed by warranty deed free of defects other than those excepted herein. If this Agreement is for sale or transfer of a Seller's interest under an existing real estate contract, Seller may transfer by either (a) special warranty deed, containing Seller's assignment of said contract in form sufficient to convey after acquired title or (b) by a new real estate contract incorporating the said existing real estate contract therein.

T. **NOTICE.** Unless otherwise provided in this Agreement, any notice expressly required by it must be given no later than two days after the occurrence or non-occurrence of the event with respect to which notice is required. If any such timely required notice is not given, the contingency with respect to which the notice was to be given is automatically terminated and this Agreement is in full force and effect. If a person other than the Buyer or the Seller is designated to receive notice on behalf of the Buyer or the Seller, notice to the person so designated shall be considered notice to the party designating that person for receipt of notice.

U. **BROKERAGE.** For purposes of this Agreement, any references to the term, "Brokerage" shall mean the respective listing or selling real estate office.

V. **DAYS.** For the purposes of this Agreement, any references to the term, "days" shall mean business or working days exclusive of legal holidays.

PAGE FOUR OF A FOUR PAGE FORM.

BEST COPY AVAILABLE

FORM HAS BEEN APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL — JULY 1, 1987

3. **CONDITION AND CONVEYANCE OF TITLE.** Seller represents that Seller ☐ holds title to the property in fee simple ☐ is purchasing the property under a real estate contract. Transfer of Seller's ownership interest shall be made as set forth in Section S. Seller agrees to furnish good and marketable title to the property, subject to encumbrances and exceptions noted herein, evidenced by ☐ a current policy of title insurance in the amount of purchase price ☐ an abstract of title brought current with an attorney's opinion (See Section H).

4. **INSPECTION OF TITLE.** In accordance with Section G, Buyer shall have the opportunity to inspect the title to the subject property prior to closing. Buyer shall take title subject to any existing restrictive covenants, including condominium restrictions (CC & R's). Buyer ☐ has ☐ has not reviewed any condominium CC & R's prior to signing this Agreement.

5. **VESTING OF TITLE.** Title shall vest in Buyer as follows: _____

6. **SELLERS WARRANTIES.** In addition to warranties contained in Section C, the following items are also warranted: _____

Exceptions to the above and Section C shall be limited to the following: _____

7. **SPECIAL CONSIDERATIONS AND CONTINGENCIES.** This offer is made subject to the following special conditions and/or contingencies which must be satisfied prior to closing: _____

8. **CLOSING OF SALE.** This Agreement shall be closed on or before _____, 19 ____ at a reasonable location to be designated by Seller, subject to Section Q. Upon demand, Buyer shall deposit with the escrow closing office all documents necessary to complete the purchase in accordance with this Agreement. Prorations set forth in Section R shall be made as of ☐ date of possession ☐ date of closing ☐ other _____

9. **POSSESSION.** Seller shall deliver possession to Buyer on _____ unless extended by written agreement of parties.

10. **AGENCY DISCLOSURE.** At the signing of this Agreement the listing agent _____ represents ( ) Seller ( ) Buyer and the selling agent _____ represents ( ) Seller ( ) Buyer. Buyer and Seller confirm that prior to signing this Agreement written disclosure of the agency relationship(s) was provided to him/her. ( ) ( ) Buyer's initials ( ) ( ) Seller's initials.

11. **GENERAL PROVISIONS.** UNLESS OTHERWISE INDICATED ABOVE, THE GENERAL PROVISION SECTIONS ON THE REVERSE SIDE HEREOF HAVE BEEN ACCEPTED BY THE BUYER AND SELLER AND ARE INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

12. **AGREEMENT TO PURCHASE AND TIME LIMIT FOR ACCEPTANCE.** Buyer offers to purchase the property on the above terms and conditions. Seller shall have until _____(AM/PM) _____, 19 ____, to accept this offer. Unless accepted, this offer shall lapse and the Agent shall return the EARNEST MONEY to the Buyer.

(Buyer's Signature)	(Date)	(Address)	(Phone)	(SSN/TAX ID)
(Buyer's Signature)	(Date)	(Address)	(Phone)	(SSN/TAX ID)

CHECK ONE

☐ ACCEPTANCE OF OFFER TO PURCHASE: Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above.

☐ REJECTION. Seller hereby REJECTS the foregoing offer. _____ (Seller's initials)

☐ COUNTER OFFER. Seller hereby ACCEPTS the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum, and presents said COUNTER OFFER for Buyer's acceptance. Buyer shall have until _____ (AM/PM) _____, 19 ____ to accept the terms specified below.

_____

_____

_____

(Seller's Signature)	(Date)	(Time)	(Address)	(Phone)	(SSN/TAX ID)
(Seller's Signature)	(Date)	(Time)	(Address)	(Phone)	(SSN/TAX ID)

CHECK ONE:

☐ ACCEPTANCE OF COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER

☐ REJECTION. Buyer hereby REJECTS the COUNTER OFFER. _____ (Buyer's Initials)

☐ COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER with modifications on attached Addendum.

(Buyer's Signature)	(Date)	(Time)	(Buyer's Signature)	(Date)	(Time)

DOCUMENT RECEIPT

State Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures. (One of the following alternatives must therefore be completed).

A. ☐ I acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures:

SIGNATURE OF SELLER		SIGNATURE OF BUYER	
_____	Date _____	_____	Date _____
_____	Date _____	_____	Date _____

B. ☐ I personally caused a final copy of the foregoing Agreement bearing all signatures to be mailed on _____, 19 ____ by Certified Mail and return receipt attached hereto to the ☐ Seller ☐ Buyer. Sent by _____

WHEN RECORDED MAIL TO:

_____

_____

_____

_____

SPACE ABOVE THIS LINE FOR RECORDER

Uniform Real Estate Contract

CAUTION: READ BEFORE YOU SIGN

(1) This is a legally binding contract; if you do not understand it, seek legal advice before you sign.
(2) This contract is intended to be filled in by lawyers or real estate brokers. All others seek professional advice.
(3) To assure protection of certain priority rights in the Property, recordation of this contract and any assignments, addenda, or legally sufficient notices of interest is highly recommended.

1. **Parties.** This contract, made and entered into this _____ day of _____, 19 ____, is by and between _____
_____
(hereafter collectively called "Seller"), whose address is _____
and _____
(hereafter collectively called "Buyer"), whose address is _____

2. **Property.** Seller agrees to sell and Buyer agrees to buy the real property (the "Property") located at _____
_____(street address), in the City of _____, County of _____
State of Utah, described as:

3. **Date of Possession.** Seller agrees to deliver possession and Buyer agrees to enter into possession of the Property on the _____ day of _____, 19 ____

4. **Price and Payment.** Buyer agrees to pay for the Property the purchase price of _____
_____ Dollars ($ _____) payable at Seller's address above given,
or to Seller's order, on the following terms: _____
Dollars ($ _____) down payment, receipt of which is hereby acknowledged, and the balance of _____
_____ Dollars ($ _____) being paid as follows:

This form is approved by the Utah Real Estate Commission.
FORM 106.1 — UNIFORM REAL ESTATE CONTRACT — Kelly Co., 55 W. Ninth South, S.L.C.

Payments shall include interest at the rate of _____ percent (_____%) per annum on the unpaid balance from the date of _____. Any payment not made within _____ (_____) days of its due date shall subject Buyer to a late payment charge of _____ percent (_____%) of such overdue payment, which charge must be paid before receiving credit for the late payment. The foregoing payments ☐ include ☐ do not include a reserve for payment of fire insurance premiums. Initially, the reserve amount per payment is $_____. In the event reserve payments in underlying obligations for taxes and/or insurance premiums for the Property change, Seller shall give Buyer thirty (30) days written notice of change, and reserve payments herein shall be adjusted accordingly.

All payments made by Buyer shall be applied first to payment of late charges, next to Seller's payments under Section 12, with interest as provided therein, next to the payment of reserves if any, next to the payment of interest, and then to the reduction of principal. Buyer may, at Buyer's option, pay amounts in excess of the periodic payments herein provided, and such excess shall be applied to unpaid principal unless Buyer elects in writing at the time of such payment that it shall be applied as prepayment of future installments.

From and after the time that the unpaid principal balance is equal to or less than the total balance outstanding on the underlying obligations referred to in Section 7 below, all payments received shall be distributed by Seller in a manner which will retire such underlying obligations either on or before the date of final payment under this contract. In the event of any prepayment, Buyer shall assume and pay all penalties incurred by Seller in making accelerated payments on any underlying obligations.

5. **No Waiver.** If Seller accepts payments from Buyer on this contract in an amount less than or at a time later than herein provided, such acceptance will not constitute a modification of this contract or a waiver of Seller's rights to full and timely future performance by Buyer.

6. **Evidence of Title.** Seller has, at his expense, furnished Buyer evidence of title in the form of ☐ an up-to-date abstract of title together with a current attorney's opinion ☐ an owner's title insurance policy insuring Buyer's interest in the Property under this contract for the amount of the purchase price.

7. **Underlying Obligations.** Seller warrants that the only underlying obligations against the Property are:

(a) obligation in favor of _____ with an unpaid principal balance of _____ Dollars ($_____) as of _____, 19____, with monthly payments of $_____, with interest at _____ percent (_____%) per annum and balloon payments as follows: _____

(b) obligation in favor of _____ with an unpaid principal balance of _____ Dollars ($_____) as of _____, 19____, with monthly payments of $_____, with interest at _____ percent (_____%) per annum and balloon payments as follows: _____

Copies of such underlying obligations have been delivered to and reviewed by Buyer. Such underlying obligations [ ] contain [ ] do not contain "due on sale" or "due on encumbrance" provisions. In the event that the Holder or Mortgagee of any underlying obligations is entitled to a remedy pursuant to a due on sale, non-alienation, or non-assumption provision as a result of the execution of this contract and/or any document(s) related hereto, the entire unpaid balance owed hereunder, without further notice, shall become immediately due and payable thirty (30) days following written notice to Buyer of the intent of any Holder or Mortgagee to exercise any such remedy.

8. **Covenant Against Liens.** Except for the liens and encumbrances listed in the preceding Section, Seller covenants to keep the Property free and clear of all liens and encumbrances resulting from acts of Seller. So long as Buyer is current hereunder, Seller agrees to keep current the payments on all obligations to which Buyer's interest is subordinate. Should Seller default on the foregoing covenants on any one or more occasions, Buyer may, at Buyer's option, in whole or in part, make good Seller's default to Seller's obligee and deduct all expenditures so paid from future payments to Seller and Seller shall credit all Buyer's sums so expended to the indebtedness herein created just as if payment had been made directly to Seller under the provisions of Section 4 above.

9. **Risk of Loss, Prorations.** All risk of loss, destruction of the Property, and expenses of insurance shall be borne by Seller until the agreed date of possession, at which time property taxes, assessments, rents, insurance, and other expenses of the Property shall be prorated.

10. **Taxes and Assessments.** Buyer agrees to pay all taxes and assessments of every kind which become due on the Property during the life of this contract. Seller covenants that there are no taxes, assessments, or liens against the Property not mentioned elsewhere herein except: _____ which will be paid by _____

11. **Insurance.** On and after the agreed date of possession, Buyer shall maintain at Buyer's expense, the following insurance policies naming the Seller as an additional insured: (i) insurance against loss by fire and other risks customarily covered by "All Risk" insurance on insurable buildings and improvements at replacement value of 80% as a "Replacement Clause" endorsement shall designate; and (ii) general liability insurance having coverage of not less than the greater of $100,000 or $_____ combined single limit with a certificate of insurance provided to Seller that includes a ten (10) day notice of cancellation in favor of Seller. All such insurance policies shall be in companies which are duly licensed by the State of Utah and are acceptable to Seller. Acceptance of such companies by Seller may not be unreasonably withheld.

12. **Seller's Option to Discharge Obligations.** In the event Buyer shall default in the payment of any taxes, assessments, insurance premiums or other expenses of the Property, Seller may, at Seller's option, pay said taxes, assessments, insurance premiums or other expenses, and if Seller elects so to do, Buyer agrees to repay Seller upon demand all such sums so advanced and paid by Seller together with interest thereon from date of payment of said sums at the rate of the greater of one and one-half percent (1½%) or _____ percent (_____%) per month until paid, and when the principal sum provided in this contract is paid, if Buyer fails to also repay Seller such advances, Seller may refuse to convey title to the Property until such repayment is made.

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13. **No Waste.** Buyer agrees that Buyer will neither commit nor suffer to be committed any waste, spoil, or destruction in or upon the Property which would impair Seller's security, and that Buyer will maintain the Property in good condition.

14. **Attorney's Fees.** Both parties agree that, should either party default in any of the covenants or agreements herein contained, the prevailing party in litigation shall be entitled to all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing or terminating this contract, or in obtaining possession of the Property, or in pursuing any remedy provided hereunder or by applicable law.

15. **Binding Effect.** This contract is binding on the heirs, executors, administrators, personal representatives, successors and assigns of the respective parties hereto.

16. **Buyer's Default.** Should Buyer fail to comply with any of the terms hereof, Seller shall give Buyer written notice specifically setting forth the provisions under which Buyer is in default. Should Buyer fail to cure such default within _____ (_____) days, but not less than ten (10) days after said notice, Seller may, in addition to any other remedies afforded Seller by law, elect any of the following remedies:

A. Seller may be released from all obligations in law and equity to convey the Property, and Buyer shall become at once a tenant at will of Seller. All payments which have been made by Buyer theretofore under this contract shall be retained by Seller as liquidated and agreed damages for breach of the contract; provided, however, that should payments of principal exceed twenty percent (20%) of the purchase price plus Seller's accrued interest, unreimbursed expenses under Section 10 and Section 12, fair rental value, and a reasonable attorney's fee, then and in that event, such excess shall be refunded to Buyer. This remedy shall not be available to Seller from and after the time Buyer shall have paid to Seller thirty-three and one-third percent (33 1/3%) or more of the purchase price; or

B. Seller may bring suit and recover judgment for all delinquent installments and all reasonable costs and attorneys' fees, and the use of this remedy on one or more occasions shall not prevent Seller, at Seller's option, from resorting to this or any other available remedy in the case of subsequent default; or

C. Seller may, upon written notice to Buyer, declare the entire principal balance and accrued interest hereunder at once due and payable and may elect to treat this contract as a note secured by a deed of trust, with Escrow Agent (hereafter named) as Trustee with power of sale thereunder, and without requirement to tender legal title to Buyer, proceed immediately to foreclose in accordance with the laws of the State of Utah applicable to trust deeds.

17. **Escrow.** Simultaneously with the execution of this contract, Seller shall execute a good and sufficient warranty deed conveying title to the Property to Buyer, and Buyer shall execute a good and sufficient quit claim deed to the Property in favor of Escrow Agent (hereafter named) as Trustee. Both deeds, together with a copy of this contract and such further instructions as shall be deemed necessary or convenient to carry out this contract, shall be deposited forthwith with _____ (a member of the Utah State Bar; a bank, building and loan association, savings and loan association or insurance company authorized to do such business in Utah; a corporation authorized to conduct a trust business in Utah; a title insurance or abstract company authorized to do such business in Utah, or a U.S. Government Agency) whose address is _____ (hereafter called "Escrow Agent") who shall hold said documents during Buyer's performance of this contract and shall deliver the same to Buyer upon completion of Buyer's obligation hereunder, or to Seller together with a Trustee's Deed in favor of Seller upon the expiration of thirty (30) days after Seller shall have notified Escrow Agent and Buyer, by sworn statement, at the above-given addresses, by certified or registered mail, that Buyer has defaulted and failed to cure such default, and Seller has elected the remedy in Section 16A, in accordance with the provisions of this contract. Costs of establishing and maintaining the escrow shall be borne equally.

18. **Assignment.** In the event Buyer or any assignee of Buyer assigns this contract, Buyer or such assignee shall, at the time of said assignment, deposit with Escrow Agent a good and sufficient special warranty deed in favor of the assignee; and said deed shall be held and delivered by Escrow Agent along with and under the same conditions as the deeds deposited originally with Escrow Agent. In the event Seller assigns or transfers his interest in the Property to a third-party, at the time of such transfer, Seller shall deposit into escrow a special warranty deed from the third-party to Buyer.

19. **Time of Essence.** It is expressly agreed that time is of the essence in this contract.

20. **Warranties of Physical Condition.** With respect to the physical condition of the Property, Seller warrants the following: _____

_____

_____

_____

21. **Captions.** Section captions shall not in any way limit, modify, or alter the provisions in the section.

22. **Entire Agreement.** This contract contains the entire agreement between the parties hereto. Any provisions hereof not enforceable under the laws of the State of Utah shall not affect the validity of any other provisions hereof.

23. **Other Provisions.** _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

178

IN WITNESS WHEREOF, the parties have set their signatures on the day and year first above written.

BUYER

_____

_____

SELLER:

_____

_____

STATE OF UTAH

ss

COUNTY OF _____

On the _____ day of _____, 19 ____, personally appeared before me _____, Seller and signer of the above instrument, who duly acknowleged to me that __he__ executed the same.

My Commission Expires

_____

_____

NOTARY PUBLIC

Residing at:

STATE OF UTAH

ss

COUNTY OF _____

On the _____ day of _____, 19 ____, personally appeared before me _____, Buyer and signer of the above instrument, who duly acknowleged to me that __he__ executed the same.

My Commission Expires

_____

_____

NOTARY PUBLIC

Residing at:

STATE OF UTAH

ss

COUNTY OF _____

On the _____ day of _____, 19 ____, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ [title] of _____, a corporation of the State of _____ and Seller in the above instrument, and that the above instrument was signed in behalf of said corporation by authority of its bylaws/a resolution of its board of directors [strike where inapplicable] and said _____ duly acknowledged to me that said corporation executed the same.

My Commission Expires

_____

_____

NOTARY PUBLIC

Residing at:

STATE OF UTAH

ss

COUNTY OF _____

On the _____ day of _____, 19 ____, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ [title] of _____, a corporation of the State of _____ and Buyer in the above instrument, and that the above instrument was signed in behalf of said corporation by authority of its bylaws/a resolution of its board of directors [strike where inapplicable] and said _____ duly acknowledged to me that said corporation executed the same.

My Commission Expires

_____

_____

NOTARY PUBLIC

Residing at:

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A. SETTLEMENT STATEMENT

U.S. Department of Housing and Urban Development

B. Type of Loan	6. FILE NUMBER	7. LOAN NUMBER	8. MORTGAGE INSURANCE CASE NUMBER
1. ☐ FHA 2. ☐ FmHA 3. ☐ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.			

C. *NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:

G. PROPERTY LOCATION:	H. SETTLEMENT AGENT:	
	PLACE OF SETTLEMENT:	I. SETTLEMENT DATE:

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		**400. GROSS AMOUNT DUE TO SELLER:**	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower *(line 1400)*		403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		*Adjustments for items paid by seller in advance*	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. **GROSS AMOUNT DUE FROM BORROWER**		420. **GROSS AMOUNT DUE TO SELLER**	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		**500. REDUCTIONS IN AMOUNT DUE TO SELLER:**	
201. Deposit or earnest money		501. Excess deposit *(see instructions)*	
202. Principal amount of new loan(s)		502. Settlement charges to seller *(line 1400)*	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		*Adjustments for items unpaid by seller*	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. **TOTAL PAID BY/FOR BORROWER**		520. **TOTAL REDUCTION AMOUNT DUE SELLER**	
300. CASH AT SETTLEMENT FROM/TO BORROWER		**600. CASH AT SETTLEMENT TO/FROM SELLER**	
301. Gross amount due from borrower *(line 120)*		601. Gross amount due to seller *(line 420)*	
302. Less amount paid by/for borrower *(line 220)*	( )	602. Less reductions in amount due seller *(line 520)*	( )
303. **CASH (** ☐ **FROM) (** ☐ **TO) BORROWER**		603. **CASH (** ☐ **TO) (** ☐ **FROM) SELLER**	

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SETTLEMENT STATEMENT, page 2

U.S. Department of Housing and Urban Development

L.	SETTLEMENT CHARGES	PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700.	**Total Sales/Broker's Commission based on price $ @ % =**		
	Division of Commission (line 700) as follows		
701.	$ to		
702.	$ to		
703.	Commission paid at Settlement		
704.			
800.	**ITEMS PAYABLE IN CONNECTION WITH LOAN**		
801.	Loan Origination Fee %		
802.	Loan Discount %		
803.	Appraisal Fee to		
804.	Credit Report to		
805.	Lender's Inspection Fee		
806.	Mortgage Insurance Application Fee to		
807.	Assumption Fee		
808.			
809.			
810.			
811.			
900.	**ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE**		
901.	Interest from to @ $ /day		
902.	Mortgage Insurance Premium for months to		
903.	Hazard Insurance Premium for years to		
904.	years to		
905.			
1000.	**RESERVES DEPOSITED WITH LENDER**		
1001.	Hazard insurance months @ $ per month		
1002.	Mortgage insurance months @ $ per month		
1003.	City property taxes months @ $ per month		
1004.	County property taxes months @ $ per month		
1005.	Annual assessments months @ $ per month		
1006.	months @ $ per month		
1007.	months @ $ per month		
1008.	months @ $ per month		
1100.	**TITLE CHARGES**		
1101.	Settlement or closing fee to		
1102.	Abstract or title search to		
1103.	Title examination to		
1104.	Title insurance binder to		
1105.	Document preparation to		
1106.	Notary fees to		
1107.	Attorney's fees to		
	(includes above items numbers;)		
1108.	Title Insurance to		
	(includes above items numbers;)		
1109.	Lender's coverage $		
1110.	Owner's coverage $		
1111.			
1112.			
1113.			
1200.	**GOVERNMENT RECORDING AND TRANSFER CHARGES**		
1201.	Recording fees: Deed $;Mortgage $;Releases $		
1202.	City/county tax/stamps: Deed $;Mortgage $		
1203.	State tax/stamps: Deed $;Mortgage $		
1204.			
1205.			
1300.	**ADDITIONAL SETTLEMENT CHARGES**		
1301.	Survey to		
1302.	Pest inspection to		
1303.			
1304.			
1305.			
1400.	**TOTAL SETTLEMENT CHARGES** *(enter on lines 103, Section J and 502, Section K)*		

CERTIFICATIONS

HUD-1 Rev. 5/76

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower

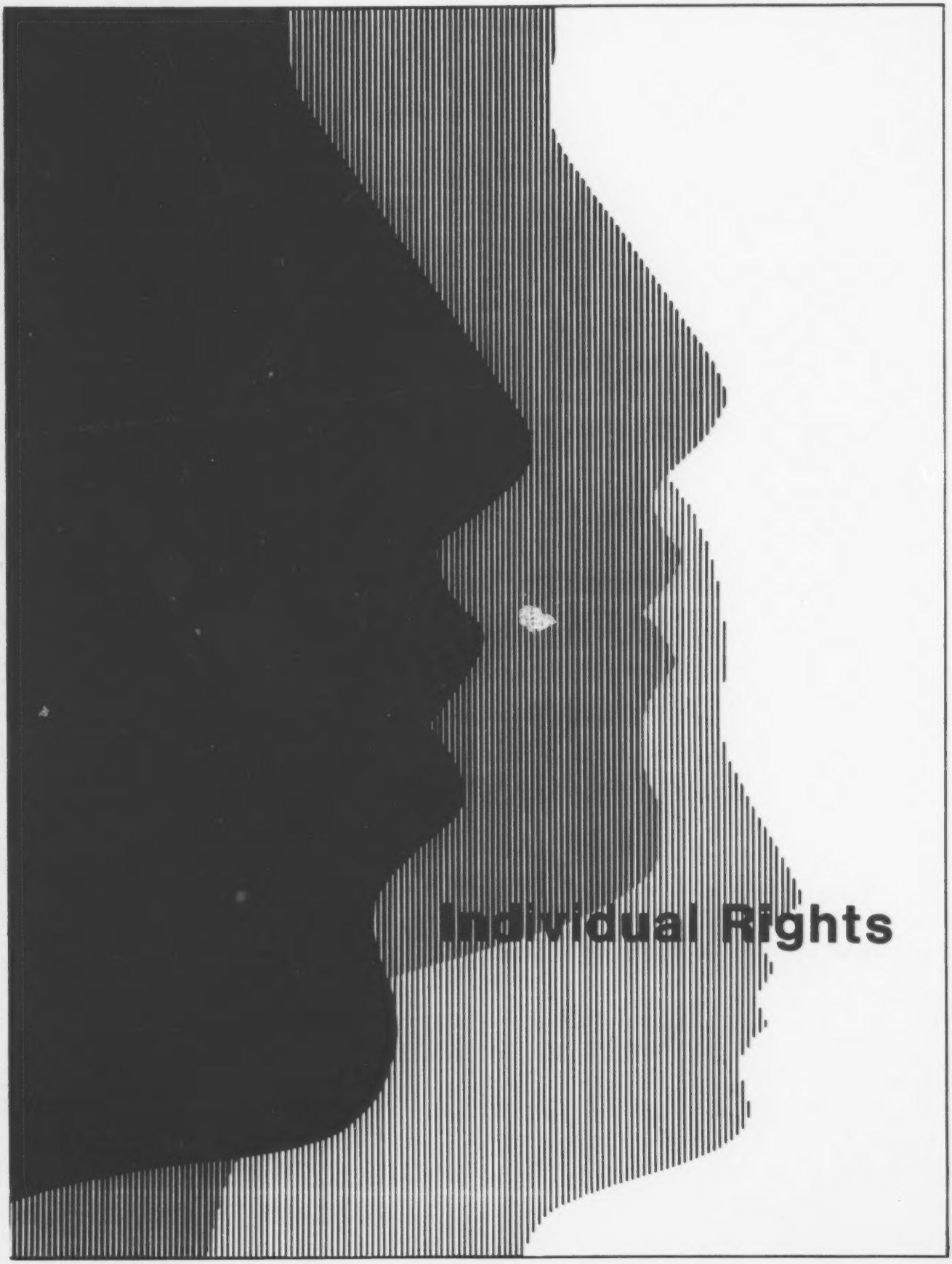
Seller

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent

WARNING: It is a crime to knowingly make false statements in the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18, U. S. Code, Sections 1001 and 1010.

HUD-1 R1969


Individual Rights

CHAPTER SEVEN

INDIVIDUAL RIGHTS AND RESPONSIBILITIES*

I. INTRODUCTION

This chapter deals with issues that have arisen in Utah relating to individual rights and liberties under federal and state laws. The first section of this chapter focuses on cases arising in Utah that have been decided under federal constitutional principles and federal laws. The second section discusses examples of individual rights and liberties dealt with by the Utah Constitution and Utah statutes.

II. UTAH CASES DECIDED UNDER FEDERAL LAWS

There have been numerous landmark decisions relating to controversies in Utah over freedom of speech, church-state relations, the right of privacy, and equality among the sexes. Several of those decisions are discussed below.

A. Freedom of Speech

Although the **First Amendment** to the United States Constitution restricts only the federal government, the **Due Process Clause of the Fourteenth Amendment** prohibits state interference with all First Amendment rights -- freedom of speech, press, religion, assembly, association, and petition for redress of grievances. Conflicts over freedom of speech in Utah have been the source of several decisions interpreting federal constitutional law.

1. Pornography and Obscenity

In 1973, the U.S. Supreme Court outlined in Miller v. California, 413 U.S. 15 (1973), the factors that must be established before the government can legitimately censor obscene materials. The three-pronged test adopted by the United States Supreme Court in Miller is as follows:

(a) whether "the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest";

(b) whether the work depicts or describes, in a particularly offensive way, sexual conduct specifically defined by the applicable state law; and

---

*This chapter was written and updated by Ross Anderson and Linda M. Jones of the law firm Anderson and Karrenberg.

(c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Miller v. California, 413 U.S. at 24.

During a few years following the U.S. Supreme Court's decision in Miller, the Utah Supreme Court, in decisions criticized throughout the country, rejected the view that federal constitutional principles regarding pornography applied to the states. In other words, according to the Utah Supreme Court's view, the states could engage in censorship without regard to federal constitutional standards, as interpreted by the U.S. Supreme Court.

In State v. Phillips, 540 P.2d 936 (Utah 1975), the Utah Supreme Court held that state courts were not required to follow federal constitutional law in cases involving freedom of speech. In a concurring opinion, Justice (later Chief Justice) Ellett made the remarkable -- some describe it as "bizarre" -- argument that the Fourteenth Amendment to the U.S. Constitution is invalid.

Likewise, in Salt Lake City v. Piepenburg, 571 P.2d 1299 (Utah 1977) Chief Justice Ellett, utilizing perhaps the most colorful, and undignified, language yet to be published by the Utah Supreme Court, called state court judges who follow the rulings of the U.S. Supreme Court in cases involving freedom of speech "sycophants" and "depraved, mentally deficient, mind-warped queers."

The composition of the Utah Supreme Court is now much different than it was in the mid-1970's and there is no doubt that First Amendment standards will be applied in Utah, as in the rest of the nation.

Presently, the law with respect to pornography and obscenity in the State of Utah is clear. In Jones v. Wilkinson, 800 F.2d 989 (10th Cir. 1986), the United States Court of Appeals for the Tenth Circuit considered the constitutionality of the Utah Cable Television Programming Decency Act, which treated the showing on cable television of "indecent material" as a nuisance, punishable by a fine. Because the standards set forth in the statute for determining whether something is "indecent" did not meet the three-part test under Miller vs. California, it was held unconstitutional. The United States District Court of Utah reasoned as follows:

> The Miller court balanced the interest of freedom of expression and the legitimate interest of the State in regulating materials that depict sexual conduct. But the failure of the legislature to incorporate adequately all three prongs of the Miller test means that protected

> speech may be prohibited. This is because TV operators would be subject to civil penalties plus costs and attorney's fees for distributing materials that, taken as a whole, does not appeal to the prurient interest. These penalties would also chill distribution of material that may have serious literary, artistic, political, or scientific value.
>
> The First Amendment seeks to protect these critical and substantial values. The Cable Television Programming Decency Act fails to incorporate these values and is therefore an unconstitutional regulation of cable television.

Community Television v. Wilkinson, 611 F.Supp. 1099, 1108-09 (D. Utah 1985), aff'd sub nom., Jones v. Wilkinson, 800 F.2d 989 (10th Cir. 1986), judgment aff'd, 480 U.S. 926 (1987).

2. Defamation

In the Ogden Bus Lines case the Court also stated that if a publication deals with matters of public interest, the publisher is immune from liability for defamation unless (a) the publisher knew the statement was false, or (b) the statement was made with reckless disregard of whether it was false.

During the 1976 campaign for the election of United States Senator from Utah, the incumbent, Frank E. Moss, discussed during a press conference the financing of the campaign of his opponent, Orrin G. Hatch. During that discussion, Senator Moss made the following statement:

> Mr. Hatch, in a joint appearance that we had, admitted that Andy Lawrence had been here as a consultant. Well, I know about Andy Lawrence. He was the bag man for Spiro Agnew.

Mr. Lawrence sued Mr. Moss for slander and Mr. Moss argued that because Mr. Lawrence was a public figure, "actual malice" must be proven to recover for defamation. The United States Court of Appeals for the Tenth Circuit acknowledged that if Mr. Lawrence was a public figure, he would have to prove actual malice on the part of Senator Moss to prevail in the lawsuit. However, the Court held that Mr. Lawrence was not a public figure. Therefore, if Senator Moss made the statement with an improper intent to do harm, or with knowledge that the statement was false, or with reckless disregard of whether it was true, the Court held he may be liable to Mr. Lawrence. Lawrence v. Moss, 639 F.2d 634, 638 (10th Cir. 1981), cert. denied, 451 U.S. 1031.

If a publication discusses a private figure and the discussion does not involve a matter of public interest, the

publisher may be liable for defamation if it is merely negligent in publishing false material. Seegmiller v. KSL, Inc., 626 P.2d 968 (Utah 1981).

3. Public Disturbances

An organization known as "Truth About Civil Turmoil Committee" sponsored a speech held on the campus of Utah State University. After the speech, members of the audience began shouting and swearing at the speaker, requiring a premature adjournment of the meeting. Some of the persons disturbing the meeting were arrested and charged with violation of a statute prohibiting the willful disturbance or breaking up of any lawful assembly or meeting. Holding that the statute is not inconsistent with the First Amendment, the Utah Supreme Court pointed out that if freedom of speech allowed one to disturb and break up public gatherings, such a right would necessarily conflict with the rights of others to freely speak, associate and assemble. State v. Chima, 463 P.2d 802, 805-06 (Utah 1970).

4. Symbolic Speech

In 1986, a group called "University of Utah Students Against Apartheid" erected several displays resembling shanties on the University of Utah campus to draw attention to the oppressive conditions suffered by blacks in South Africa and to protest continued investment by the University in companies doing business in South Africa. After the University determined that it would not cease its investment activities, the President of the University informed the students that the shanties would have to be removed from the campus.

The students sued, claiming that the First Amendment protected their use of the shanties to communicate their ideas. In University of Utah Students Against Apartheid v. Peterson, 649 F. Supp. 1200 (D. Utah 1986), the Court held that nonverbal or symbolic speech is protected under the First Amendment and that the shanties constituted such protected "speech" because (a) there was an intent to convey a particularized message, and (b) there was a substantial likelihood that the message would be understood by those who viewed it. The Court held further that the freedom of speech is not absolute, quoting the United States Supreme Court as follows:

> Nothing in the Constitution requires the government freely to grant access to all who wish to exercise their right to free speech on every type of government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities.

The Court held that the students had a right to express their views by utilizing the shanties, but that the University could enact reasonable rules and regulations regarding the time, place and manner of the use of the shanties. According to the Court, such rules and regulations cannot be "content related" and must be drafted so that the University may "protect its interests while allowing the maximum possible exercise of student expression."

B. Prohibition Against State Establishment of Religion and Free Exercise of Religion

Organized religious groups have been the focus of various lawsuits in Utah involving both the prohibition against the establishment of religion by the state or federal government and the infringement by the state or federal government of the free exercise of religion.

1. Establishment of Religion

a. Discrimination by Religious Organizations on Religious Grounds in Secular Activities

In 1981, the Deseret Gymnasium, a non-profit athletic facility in Salt Lake City owned and operated by the Mormon Church, discharged a long-time employee solely because of his failure to qualify for a temple recommend. The discharged employee, as well as several other persons who had been discharged on religious grounds by businesses owned and operated by the Mormon Church, brought suit against the Church.

The Federal Civil Rights Act of 1964 prohibits most employers from discharging their employees on the basis of religion. See 42 U.S.C. Section 200e-2(a). However, religious organizations are expressly exempted from the coverage of the Act. The plaintiffs claimed that the exemption for religious organizations contained in the Civil Rights Act unconstitutionally violated the Establishment Clause of the First Amendment insofar as it promoted religion by permitting discrimination by religious organizations on the basis of religion in "non-religious" activities, such as the operation of Deseret Gym. Amos v. Corporation of Presiding Bishop, 594 F.Supp. 791 (D. Utah 1984), rev'd, 483 U.S. 327 (1987).

The United States District Court for the District of Utah agreed. It concluded that the "primary effect" of the exemption, when applied to secular or non-religious activities, was to grant religious organizations "an exclusive authorization to engage in conduct which can directly and immediately advance religious tenants and practices." Id. at 825. For that reason, the Court declared the exemption unconstitutional as applied to secular activities and found that the Church had therefore violated the Civil Rights Act by dismissing employees in non-religious enterprises on purely religious grounds.

The Mormon Church appealed the District Court's decision to the United States Supreme Court. The Supreme Court reversed the decision of the District Court, concluding that government advancement of religion was not a primary effect of the exemption. The Court explained that a law is not violative of the Establishment Clause unless the government itself has advanced religion through its own activities and influence. The Court noted: "[F]or the men who wrote the Religion Clauses of the First Amendment the 'establishment' of religion connoted sponsorship, financial support and active involvement of the sovereign in religious activity." 483 U.S. at 337. In the Court's view, the exemption did not constitute government advancement of religion because it merely allowed the Mormon Church itself to discriminate. "In such circumstances," the Court observed, "we do not see how any advancement of religion achieved by the Gymnasium can be fairly attributed to the Government, as opposed to the Church." 483 U.S. at 337. Thus, the constitutionality of the exemption was upheld.

b. Seminary Release Time in Public Schools

Logan High School allowed students to be released from school one hour each day to receive religious instruction at a seminary program sponsored by the Mormon Church. Two units of credit for completion of Old Testament and New Testament courses at the seminary were granted toward graduation from Logan High School.

When the seminary program was challenged as being violative of the Establishment Clause, the United States District Court for the District of Utah held that simply releasing students for religious instruction does not violate the constitutional ban against the governmental establishment of religion, but that the granting of public high school credit for courses concerned primarily with the advocacy of the religious beliefs and practices of the Mormon Church constituted an impermissible involvement in religion by the state. The Court reasoned as follows:

> The Establishment Clause prohibits sponsorship, financial support or active involvement by the sovereign (here the school district) in religious activity. The State is required to maintain an attitude of neutrality toward religion.
>
> Our courts having mandated bounds of absolute neutrality in matters of religion for the public school, no plausible secular purpose can be served by accreditation of classes that are both religious and sectarian in nature.

Lanner v. Wimmer, 463 F.Supp. 867, 881 (D. Utah 1978), aff'd in part and rev'd in part, 662 F.2d 1349, (10th Cir. 1981).

The United States Court of Appeals for the Tenth Circuit affirmed certain minor aspects of the District Court's decision, but substantially reversed its practical effect. Lanner v. Wimmer, 662 F.2d 1349 (10th Cir. 1981). The Court of Appeals noted that the governing policy of the Utah Board of Education precluded the giving of credit for released time courses "devoted mainly to denominational instruction." The Court of Appeals concluded that the policy required the State of Utah to monitor and evaluate the content of released time programs to determine if they were "mainly denominational" in character. Such monitoring, in the Court's view created "excessive entanglement" between the State and religious institutions in violation of the Establishment Clause.

The Court of Appeals also concluded that if the monitoring process were eliminated and the Board of Education authorized the granting of credit for all released time classes, without regard to their religious content, the Establishment Clause would not be violated. Thus, the Court of Appeals prohibited the giving of academic credit for LDS seminary courses under the existing released time program, which required state monitoring, but authorized such credit under a modified program where released time classes were available "to all students on terms that do not require any test for religious content."

c. State Erection or Maintenance of Religious Symbols

On the north side of the Metropolitan Hall of Justice in Salt Lake City stands a 3 x 5 foot granite monolith inscribed with a version of the Ten Commandments. The monolith was erected by the Fraternal Order of Eagles, after permission was granted by the Boards of Commissioners of Salt Lake City and Salt Lake County. The commissioners also authorized the installation and maintenance of lighting equipment to illuminate the display, at City and County expense.

Suit was brought by residents of Salt Lake County, seeking removal of the monolith on grounds that the erection and maintenance of the display violated the Establishment Clause of the First Amendment. The United States Court of Appeals for the Tenth Circuit recognized that the Constitution requires government neutrality in religious matters, but determined that the monolith is primarily secular, not religious, in character and that neither its purpose nor effect tends to establish religious belief. Holding that the erection and maintenance of the display is not unconstitutional, the Court noted as follows:

> [W]e must strike a balance between that which is primarily religious and that which is primarily secular, albeit embodying some religious impact. A tempered approach obviates the absurdity of striking down insubstantial and widely accepted references to the deity

in circumstances such as courtroom ceremony, oaths of public office, and on national currency and coin.

Anderson v. Salt Lake City Corporation, 475 F.2d 29, 32 (10th Cir. 1973), cert. denied, 414 U.S. 879 (1973).

d. Invocation and Benediction at a Public Secondary School Graduation

The father of a Rhode Island high school graduate filed a complaint to permanently enjoin school officials from inviting a member of the clergy to deliver a prayer at the student's graduation. The District Court in that case granted the injunction and the United States Supreme Court affirmed the lower court's ruling on the grounds that a prayer by a member of the clergy at a public school graduation ceremony is forbidden under the establishment of religion clause or the Federal Constitution. Lee v. Weisman, 505 U.S. ---, 120 L.Ed. 2d 467 (1992).

In a similar case in Utah, students from the Granite and Alpine School Districts and their parents brought an action to require the school districts and their employees to adopt a policy prohibiting prayer at graduation exercises and other school sponsored events. After the United States Supreme Court issued its decision in Lee, the school district defendants in the Utah case agreed to settle the matter and issued statements that the school district would discontinue the exercise of allowing prayers at district sponsored graduation exercises. The school districts also adopted policy statements affirming their commitment that public prayers would not be given, recited, or allowed at school sponsored activities.

2. Free Exercise of Religion

a. Polygamy The federal and state governments may not promote religion; neither may they interfere with free exercise of religion. However, the freedom to exercise religion, like other constitutional rights, is not absolute.

In an early landmark decision, the United States Supreme Court upheld the polygamy conviction of a Mormon, despite the fact that an accepted doctrine of his religion then imposed upon its male members the duty to practice polygamy. Distinguishing between the freedom to act and the freedom to believe, the Court stated its reasoning as follows:

> Laws are made for government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the Civil government under which he lived could not interfere to prevent a sacrifice?

Reynolds v. United States, 98 U.S. 145 (1878).

In 1985, the United States Court of Appeals for the Tenth Circuit considered the continuing validity of Reynolds in the context of a lawsuit filed by a Murray City Utah police officer who had been fired for being a polygamist. Potter v. Murray City, 760 F.2d 1065 (10th Cir.), cert. denied, 88 L.Ed.2d 120 (1985). The Court held that the police officer did not have a valid claim, noting that the State of Utah has a "compelling State interest in a commitment to a system of domestic relations based exclusively upon the practice of monogamy as opposed to plural marriage."

b. Other Religious Opposition to Laws A counterfeiter of Federal Reserve notes in Utah was convicted of violation of federal criminal statutes. He argued that because he held religious beliefs against a welfare state, which resulted from the currency system, the laws under which he was convicted unconstitutionally interfered with his free exercise of religion. The United States Court of Appeals for the Tenth Circuit stated that conduct -- even if religiously motivated -- is subject to regulation for the protection of society. The Court held that the counterfeiter's religious belief in the invalidity of the federal currency laws did not allow him to act contrary to the federal counterfeiting laws. United States v. Grismore, 564 F.2d 929 (10th Cir. 1977), cert. denied, 435 U.S. 954 (1978).

C. Right To Privacy

Although there is no express constitutional provision for a right of privacy, in recent years the courts have found such a right implicit in many of the fundamental constitutional principles in the Bill of Rights. The constitutional right of privacy is likely to be the subject of many lawsuits in the next few years, while the courts outline the nature and extent of the right.

1. Dress and Grooming Standards

Two Salt Lake City employees were discharged because of noncompliance with a work regulation prohibiting hair worn over the ears or collars. The United States District Court for the District of Utah held that the right to wear hair at any length is not a constitutional right, regardless of whether a school regulation or work regulation is involved. Farmer v. Catmull, 339 F.Supp. 70 (D. Utah 1972). The Court appeared to consider the matter a trivial one, which did not "directly and sharply implicate basic constitutional values." For a similar holding with respect to Utah school regulations on the length of hair, see Freeman v. Flake, 448 F.2d 258 (10th Cir. 1971), cert. denied 405 U.S. 1032 (1972).

2. Contraceptive Services

After the United States District Court for the District of Utah held in 1975 that the State of Utah cannot require parental consent in order for the Utah Planned Parenthood Association to

provide family planning assistance to minors, T.H. v. Jones, 425 F.Supp. 873 (D. Utah 1975), the Utah legislature enacted a statute requiring that "[a]ny person before providing contraceptives to a minor shall notify . . . the minor's parents or guardian of the service requested to be provided to such minor."

The United States District Court for the District of Utah held in 1983 that the statute was preempted by comprehensive federal health laws providing for family planning assistance for minors and for confidentiality with respect to medical services. The Court also held that the statute unconstitutionally infringed upon the right to decide whether to bear or to beget children because it did not provide for any procedure whereby contraceptives could be obtained confidentially by a mature minor or by a minor who could demonstrate that his or her best interests are contrary to parental notification. Planned Parenthood Ass'n of Utah v. Matheson, 582 F.Supp. 1001 (D. Utah 1983).

Having lost the first battles, the Utah Legislature enacted a new statute requiring that "no public funds shall be used to provide contraceptive . . . services to an unmarried minor without the prior written consent of the minor's parent or guardian." Planned Parenthood Association of Utah (PPAU), which provided services to Medicaid recipients, submitted applications for Medicaid reimbursement to the Utah Department of Health, the administrator of the Medicaid program in Utah. Citing the new statute, the Department of Health refused to pay PPAU because no written parental consents were attached to the applications.

PPAU sued the Utah Department of Health and in 1987 the United States Court of Appeals for the Tenth Circuit affirmed the Federal District Court's holding that the requirement of consent is pre-empted by federal Medicaid laws. The Court stated as follows:

> Utah may participate in the program and thereby accept the conditions attached by the federal acts which may be contrary to State law or unwanted or instead choose not to participate and use its own funds as it wishes. If the choice is to participate, there is thereby accepted a limitation or restriction on state statutes or regulations which conflict with the federal statutes.

Planned Parenthood Ass'n of Utah v. Dandoy, 810 F.2d 984, 988 (10th Cir. 1987).

3. **Abortion**

In the 1976 case of Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), the U.S. Supreme Court held that a state may not require the consent of parents for a minor's abortion. Apparently responding to that decision, the Utah legislature enacted a statute requiring that a physician must

"notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor, or the husband of the woman, if she is married."

A 15 year-old girl in Utah sought to have an abortion during her first trimester of pregnancy without notification to her parents. She brought suit, arguing that the notification statute was unconstitutional because her right of privacy encompassed the right to have an abortion free from regulation or interference by the State.

The Utah Supreme Court ruled that the statute was constitutional. H.L. v. Matheson, 604 P.2d 907 (Utah 1979), aff'd, 450 U.S. 398 (1981). It recognized that the U.S. Supreme Court, in Roe v. Wade, 410 U.S. 113 (1973), ruled that the right of privacy, found in the Fourteenth Amendment concept of personal liberty, encompasses a woman's decision as to whether to terminate a pregnancy. The Court noted, however, that the right is not unqualified and may be regulated if the state has a compelling interest in the regulation. Further, according to the Utah Supreme Court, because the state has somewhat broader authority to regulate the activities of children than of adults, only a significant state interest need be shown.

The Court found the state's significant interests, justifying the requirement of parental notification, were (a) the parent may be able to provide valuable information needed by the physician, and (b) an unmarried pregnant minor should be encouraged to seek the advice of her parents.

The decision in H.L. v. Matheson was affirmed by the U.S. Supreme Court. However, in that decision the Court stressed that the plaintiff was living at home and dependent upon her parents. H.L. v. Matheson, 450 U.S. 398 (1981). It left undecided the question as to whether a state can constitutionally require parental notification in the case of an "emancipated" or "mature" minor seeking an abortion or under circumstances where notification would be contrary to the minor's best interests.

In L.R. v. Hansen, Civil No. C80-0078J (Feb. 8, 1980), the United States District Court for the District of Utah held that the statute does not apply to minors who are "emancipated" -- that is, those who are not dependent upon their parents. However, in H.B. v. Wilkinson, 639 F.Supp. 952 (D. Utah 1986), the court questioned whether a notification requirement would be unconstitutional as applied to the "mature" or "emancipated" minor.

The constitutionality of a requirement of parental consent in cases involving minors who seek to have abortions has been an issue raised in several cases before the United States Supreme Court. However, since the H.L. v. Matheson case, there still is some question as to whether a state may require parental notification in every instance of minors seeking abortions.

In Akron v. Akron Ctr. for Reproductive Health, 462 U.S. 416 (1983), the United States Supreme Court held that a state may not impose a blanket requirement of parental consent for all minors seeking abortions. The state "must" provide an alternative procedure whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interest. Id. at 439, 440. Although the matter has yet to be decided, the rule with respect to parental notification may very well be the same as that regarding parental consent.

In Planned Parenthood v. Casey, 112 S.Ct. 2791 (1992), the United States Supreme Court reaffirmed the "essential holding" of Roe v. Wade that state laws regulating a woman's right to an abortion prior to viability are an unconstitutional infringement on a woman's liberty interest under the Due Process Clause of the Fourteenth Amendment. The Court also held that the state can prohibit abortions during that period after viability if the restrictions serve a legitimate purpose.

As a result of the Supreme Court's ruling in Casey, the United States District Court for the District of Utah held that Utah legislation, which was passed in 1991 and designed to limit a woman's right to an abortion during all gestation periods, was unconstitutional as it applied to the first 20 weeks of gestation. Jane L. v. Bangerter, 809 F.Supp. 865 (D.Utah 1992). However, the court in the Jane L. case held that the State can constitutionally limit the circumstances under which a woman can have an abortion during the period after 20 weeks of gestation to (1) when the abortion was necessary to save the life of the pregnant woman, (2) when the abortion would prevent grave damage to the pregnant woman's medical health, or (3) when the abortion would prevent the birth of a child with grave defects. In addition, the Court ruled that (1) a requirement that the physician use medical procedures that would give the unborn fetus the best chance of survival if it was sufficiently developed to survive outside its mother's womb, is constitutional, and (2) a requirement that the physician notify a married woman's husband of the abortion "impose[d] a substantial obstacle" to the constitutional right to have an abortion and was, therefore, unconstitutional under the Fourteenth Amendment.

Since the Court's ruling in Jane L., the 1993 Utah Legislature enacted a bill revising the Utah abortion laws. The new legislation redefines some phrases that were challenged as unconstitutional in the Jane L. case. It also requires a physician to obtain a written consent form from a woman who is seeking an abortion and requires a physician, at least 24 hours prior to the abortion, to inform the woman who is seeking the procedure about (1) the nature of the procedure, (2) the risks involved, (3) the alternatives available, (4) the probable gestational age of the fetus, (5) the availability of medical assistance for prenatal care, childbirth and neonatal care, and (6) the father's legal

responsibility to assist in the support of the child. The 1993 legislation also provides that if a physician fails to comply with the new legislation, his or her license to practice medicine in Utah may be suspended or revoked.

D. Equality Among the Sexes

In 1974, Utah law provided that women reached the age of majority at eighteen and that men reached majority at twenty-one. In Stanton v. Stanton, 517 P.2d 1010 (Utah 1974), rev'd, 421 U.S. 7 (1975), a divorce decree required a father to pay child support for his daughter and son. He stopped making support payments for his daughter when she reached the age of eighteen. The mother sought a judgment in divorce court for support payments for the daughter. The court held the daughter had reached majority and, therefore, the father had no continuing obligation to make payments.

The mother appealed to the Utah Supreme Court, arguing that the difference in the statute regarding majority was "invidiously discriminatory" and denied due process and equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the Utah Constitution including Article IV, Section 1, which provides that "both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges."

The Utah Supreme Court held that the statutory distinction between the sexes was constitutional, noting that certain "old notions . . . continue to prevail as to numerous interesting differences" between the sexes. The Court continued:

> Included among them is the belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family; and that however many exceptions and whatever necessary and proper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities.
>
> Perhaps more important than this, there is another widely accepted idea: that girls tend generally to mature physically, emotionally and mentally before boys, and that they generally tend to marry earlier.

Stanton v. Stanton, 517 P.2d at 1012.

The United States Supreme Court reversed, finding no rational basis for the distinction between the age of majority for men and women. The Court reasoned as follows:

> Notwithstanding the 'old notions' to which the Utah court referred, we perceive nothing rational in the distinction drawn by Section 15-2-1 which, when related to the divorce decree, results in the appellee's liability for support for Sherri only to age 18 but for Rich to age 21. This imposes 'criteria wholly unrelated to the objective of that statute.' A child, male or female, is still a child. No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas. Women's activities and responsibilities are increasing and expanding. Coeducation is a fact, not a rarity. The presence of women in business, in the professions, in government and, indeed, in all walks of life where education is a desirable, if not always a necessary, antecedent is apparent and a proper subject of judicial notice. If a specified age of minority is required for the boy in order to assure him parental support while he attains his education and training, so, too, it is for the girl. To distinguish between the two on educational grounds is to be self-serving; if the female is not to be supported so long as the male, she hardly can be expected to attend school as long as he does, and bringing her education to an end earlier coincides with the role-typing society has long imposed. And if any weight remains in this day to the claim of earlier maturity of the female, with a concomitant inference of absence of need for support beyond 18, we fail to perceive its unquestioned truth or its significance.

Stanton v. Stanton, 421 U.S. 7, 14-15 (1975).

III. Individual Rights and Liberties Under Utah Law

The states may not alter federal constitutional law, but they are free to provide greater protection for their citizens than those required by the United States Constitution. In terms of individual liberties, the greatest importance of state constitutions and state legislation lies in the greater protection offered by them as compared to the protection of the United States Constitution and federal legislation. The protection of individual rights and liberties under Utah law will be examined in this section.

A. Freedom of Speech, Assembly and Religion

Article I, Section 1 of the Utah Constitution provides as follows:

> All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess

and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

1. Freedom of Speech

As under the United States Constitution, freedom of speech under the Utah Constitution is not absolute. The right of free speech is subject to reasonable regulation by the State when it collides with more paramount public interests. Thus, the Utah Supreme Court has held that peaceful picketing is an exercise of constitutionally guaranteed free speech but that the State may prohibit picketing conducted under violent circumstances. Sutton v. Marvidikis, 310 P.2d 735 (Utah 1957).

2. Defamation

Utah law provides that one is guilty of a Class B misdemeanor if he "knowingly communicates to any person orally or in writing any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt, or ridicule." Utah Code Ann. Section 76-9-404.

3. Freedom of Religion

Although Article I, Section 1 of the Utah Constitution recognizes the right to worship according to the dictates of one's conscience and Article I, Section 4 provides that the State shall not make any law prohibiting the free exercise of religion, Article III provides that "polygamous or plural marriages are forever prohibited."

Under the Utah Constitution, one would unlikely be able to justify actions contrary to law by arguing that such actions are merely an exercise of religion or of the right to worship freely as guaranteed by the Utah Constitution.

B. Due Process

Inasmuch as Article I, Section 7 of the Utah Constitution is substantially similar to the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, the Utah Supreme Court has stated that the decisions of the United States Supreme Court relating to those amendments are highly persuasive as to the interpretation of Article I, Section 7 of the Utah Constitution. Untermeyer v. State Tax Comm., 129 P.2d 881 (Utah 1942). Thus, it is unlikely that in interpreting the Due Process Clause of the Utah Constitution, the Utah Supreme Court will construe due process rights much differently than the United States Supreme Court has done in interpreting the Federal Constitution.

C. Right to Privacy

1. Lie Detector Tests

A matter of great controversy is whether it is an unwarranted invasion of privacy for an employer to require one's consent to submit to a polygraph test upon demand. Many employers argue that such consent requirements deter employees from stealing and provide an efficient means of determining the identify of guilty employees. On the other hand, many employees counter that polygraph tests are inaccurate and often administered by incompetent polygraphers. They also argue that the use of the tests often result in the invasion of sensitive aspects of one's life, having nothing to do with job performance.

The Utah Legislature has examined the problem, but has responded to it only by enacting licensing laws, intended to assure the competence of polygraphers and operators of other truth detection devices (e.g. voice stress tests), Utah Code Ann. Section 34-37-1.

2. Random Drug Tests

Another matter of concern for Utah employees is the random drug test laws enacted in 1987. In considering the issue, the Utah Legislature made this statement in support of the laws:

> The Utah Legislature finds that a healthy and productive work force, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of products produced and services rendered in the state are important to employers, employees and the general public. The Legislature further finds that the abuse of drugs and alcohol creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

The laws allow the employer to test for the presence or use by employees of drugs and alcohol as a condition of hiring the employee or continuing employment. The testing can be required even where there is no cause to believe an employee has taken any drugs or consumed any alcohol. The information obtained by the employer is required to be kept confidential and cannot be used in any public or private proceeding except under limited circumstances. Utah Code Ann. Sections 34-38-1, et seq.

3. Criminal Laws Protecting Privacy

Under Utah statute, one is guilty of a Class B misdemeanor if one trespasses on property to eavesdrop or subject another person to surveillance in a place where one may reasonably expect to be safe from intrusion or surveillance. Also, the installation or use of any device to observe, photograph, record, amplify or broadcast sounds or events occurring in a private place is a crime in Utah. Utah Code Ann. Section 76-9-402.

D. Discrimination

1. Sexual Equality Provision in the Utah Constitution

While there has been tremendous controversy over the proposed Equal Rights Amendment to the United States Constitution, the Utah Constitution contains a provision which seems to provide even greater guarantees of equality among the sexes. Article IV, Section 1 states in part as follows:

> Both male and female citizens of the State shall enjoy equally all civil, political and religious rights and privileges.

Notwithstanding the arguments that the Equal Rights Amendment, if enacted, would cause drastic changes throughout our society, Article IV, Section 1 of the Utah Constitution seems to have gone almost unnoticed. Since the adoption of the Utah Constitution in 1895, there have been only a few, rather insignificant cases requiring an interpretation or application of Article IV, Section 1.

2. Utah Antidiscrimination Act

The Utah Antidiscrimination Act, Utah Code Ann. Sections 34- 5-1 et seq., provides in part as follows:

> It is a discriminatory or prohibited employment practice . . . for any employer to refuse to hire or promote or to discharge, demote, terminate any person, or to retaliate against, harass, or to discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified, because of race, color, sex, pregnancy, child birth . . ., age, if the individual is 40 years of age or older, religion, national origin, or handicap.

Utah Code Ann. Section 34-35-6

One of the purposes of the Act is to eliminate discrimination in the payment of wages based solely on the basis of sex where men and women are doing the same or similar work under all of the same conditions. Kopp v. Salt Lake City, 506 P.2d 809, 809-10 (Utah 1973).

APPENDIX

ORGANIZATIONS TO KNOW -- CHAPTER SEVEN

American Civil Liberties Union (ACLU)
Boston Building
#9 Exchange Place, Suite #419
Salt Lake City, Utah 84111
Phone: 521-9289

Crossroads Urban Center
347 South 400 East
Salt Lake City, Utah 84111
Phone: 364-7765

Legal Center for People with Disabilities
455 East 400 South, Suite 201
Salt Lake City, Utah 84111
Phone: 363-1347

Mountain West Educational Equity Center
Weber State College
Ogden, Utah 84408-1210
Phone: 626-6650

NAACP-National Association for the Advancement of Colored People
742 West South Temple
Salt Lake City, Utah 84105
Phone: 363-5771

State Industrial Commission
160 East 300 South
P. O. Box 146610
Salt Lake City, Utah 84114-6610
Phone: 530-6800

Utah State Office of Education
Title IX and Section 504
Richard Gomez Education Equity Coordinator
250 East 500 South
Salt Lake City, Utah 84111
Phone: 538-7643 and 538-7646
and
Douglas Bates
Law Specialist
250 East 500
South Salt Lake City, Utah 84111
Phone: 538-7832

CHAPTER SEVEN

INDIVIDUAL RIGHTS AND RESPONSIBILITIES

"Where You Live" Questions and Answers

p. 417. **What are the rules in your town or city regarding permits for demonstrations, marches, or outdoor concerts? Have any groups been denied permits?**

Chapter 3.50 of the Salt Lake City Ordinances governs commercially related special events, such as parades, processions, outdoor concerts and other gatherings at city-owned public facilities where a fee is charged or a financial return is expected. It also regulates free expression activities, including processions, formations or assemblies that have been organized in public areas so that the participants can engage in constitutionally protected speech or assembly.

Organizers of commercially related special events and free expression activities, which have been planned in advance, must make application to the events coordinator of the Salt Lake City mayor's office for a permit at least thirty days prior to the event. The application for a permit must disclose (1) the identity of the applicant, the person or organizations chiefly responsible for conducting the event, and, if an organization is sponsoring the event, the chief officer; (2) the date, place and time of the event; (3) the route of the event if it is not confined to one specific location; (4) an estimate of the number of event participants; (5) the number and location of facilities meeting public health or safety requirements; (6) the number of persons monitoring, directing and controlling the event; (7) the arrangements made for first aid or other medical emergencies; (8) that the organizer of the event has obtained liability insurance; and, (9) if the application is for a free expression event, the basis for claiming that the event should not be treated as a commercially related special event.

A person applying for a permit is required to pay a $100.00 fee upon submitting the application and may be required to furnish additional information relating to the event if it is deemed necessary by the Events Review Committee or as set forth in Chapter 3.50.

In order to obtain a permit for a free expression activity on short notice, organizers or sponsors of the activity must provide the events coordinator with sufficient information so that the coordinator can determine whether the event will unreasonably "interfere with the movement of police, fire,

ambulance and other emergency vehicles or other provision of public health, safety and welfare service so as to create an immediate clear and present danger to public health, safety or welfare."

Groups have been denied permits for commercially related special events for failing to disclose the necessary and requested information in the application for permit or failing to demonstrate a willingness or an ability to comply with the terms and conditions of the laws set forth in Chapter 3.50.

p. 424 **Does your state have a Freedom of Information Act? What information is covered by the act? How can a citizen get information under the act?**

In 1991, the Utah Legislature enacted the Government Records Access and Management Act (GRAMA). It provides every person with the "right to inspect a public record free of charge, and a right to make a copy of a public record during normal working hours." Utah Code Ann. Section 63-2-201(1). According to Utah Code Ann. Section 63-2-301, the following records are public and may be inspected: laws; records reflecting names or gender; certain job and educational information concerning governmental employees who are not undercover law enforcement personnel or investigative personnel if the disclosure would not impair their investigations or endanger their safety; final opinions made by governmental entities; certain final interpretations of statutes or rules by governmental entities; certain information concerning open meetings of governmental entities; certain judicial records; records filed with or maintained by certain county workers or other governmental entities that give public notice concerning property; records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings; data that would normally be private concerning an individual if the individual has given the governmental entity permission to make the records available to the public; information concerning payment by a governmental entity to a contractor or private provider; and summary data.

The statutes also delineate those records that are normally public but may not be inspected and those records that may not be inspected upon request. See Utah Code Ann. Sections 63-2-301(3)(b), 63-2-302, 63-2-303, and 63-2-304. GRAMA specifically recognizes that the list of public records available for inspection (as set forth above) is not exhaustive and should not be used to limit access to other records.

A citizen can inspect a record under GRAMA from the governmental entity maintaining the record if he or she (1)

has the right to inspect it, (2) identifies the record with reasonable specificity, and (3) pays a reasonable fee that the governmental entity may charge to cover its actual cost of duplicating or compiling the record. Under certain conditions, the governmental entity may fulfill a record request without charging the fee and is encouraged to do so. Utah Code Ann. Sections 63-2-201(7) and 63-2-203.

p. 441. **What laws in your state protect privacy? How are these laws enforced?**

Utah privacy laws are articulated in the criminal code at Utah Code Ann. Sections 76-9-401 to 76-9-406. According to the criminal statutes a person will be guilty of a class B misdemeanor if he or she (1) trespasses on the private property of another with the intent of eavesdropping or conducting a surveillance; (2) "installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in the place or uses any such unauthorized installation"; or (3) installs or uses outside of a private place any device or recording, broadcasting, hearing or amplifying sounds "originating in the place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there." Utah Code Ann. Section 76-9-402.

Any interception of a private communication or divulgence of a communication that was illegally intercepted, without the consent of the sender or receiver, is also a class B misdemeanor. A false communication about another person, if that communication will expose the other person to public hatred, contempt, or ridicule, is likewise a class B misdemeanor. Utah Code Ann. Sections 76-9-403 to 404.

Violations of Sections 76-9-402 to 76-9-404 may be reported to the police. A person whose privacy rights have been violated may also file a civil lawsuit against the offending party and seek a monetary award or ask the court to enjoin the offending party from engaging in the violative conduct.

Other Utah and federal laws serve to protect our privacy rights. Many of the laws may be enforced by filing a civil action in court against the party who has invaded that right.

p. 445. **How do schools in your community notify people of their privacy rights? What written procedures have been developed to implement this law?**

Your school district's central administration can tell you about your district's policy regarding privacy rights. It

will probably be in the form of an official policy adopted by the board of education in your district.

p. 451. **What is the law in your state regarding abortion? Who can get an abortion? Is permission required from one or both parents of a pregnant teenager or the father of the fetus? Have there been important court cases in your state regarding abortion?**

In the recent decision of Casey v. Pennsylvania, the United States Supreme Court determined that laws prohibiting or imposing strict regulations relating to abortions prior to viability are unconstitutional. In Jane L. v. Bangerter, the Federal District Court in Utah held that the banning of abortions on demand during the first twenty weeks of gestation "constitutes an unconstitutional infringement of a woman's liberty interest." After finding that non-therapeutic abortions after the 20 week gestation period have never been performed in Utah, the Court held that a statutory ban on such abortions, with certain exceptions, is constitutional.

The spousal notification clause in Utah's abortion law was recently overturned. Therefore, a pregnant woman does not need the permission of the father to obtain an abortion. Parents of minors seeking abortions in Utah generally must be informed prior to the abortion procedure. Such a parental notification requirement, however, may be unconstitutional as applied to "mature" or "emancipated" minors, as well as in other instances where a court may find that notification should not be required.

p. 457. **What due process procedures are followed by schools in your area before a student is suspended?**

This varies from district to district, but every district should have a policy. Ask the central administration of your school district for a copy of the policy. It is probably a formally adopted policy of the Board of Education.

p. 461. **Does your state or local government have any laws against discrimination? What groups are protected by these state laws? What state and local agencies are responsible for enforcement?**

The Utah Constitution contains a strict sex equality provision that provides even greater protection against gender-based discrimination than the United States Constitution. Article IV, Section 1, Utah Constitution. The statutory law in the state of Utah varies only slightly from federal law. The Utah Anti-Discrimination Act (UADA) prohibits discrimination in the workplace and other agencies based on race, religion, color, sex, age, ancestry, national origin and handicap. Three of the most important laws or Executive Orders are as follows:

1. The Utah State Fair Employment Practices Act, also called the Utah Anti-Discrimination Act, prohibits discrimination in employment because of race, creed, color, sex, religion, ancestry, national origin, handicap, and age if the individual is forty or over.

2. The Governor's Code of Fair Practices, Executive Order of May 4, 1979, prohibits discrimination in employment because of race, color, sex, religion, national origin, age or handicap by all state agencies and state contractors, including state licensing and regulatory agencies and by private employers with at least twenty-five employees.

3. The Governor's Executive Order of December 6, 1973, the Office of Equal Employment Opportunity Program, requires state agencies to have Affirmative Action Plans (AAP).

The UADA created the Industrial Commission of Utah which is responsible for enforcing the anti-discrimination regulations.

p. 468. **What is the racial makeup of schools in your area? How has this changed over the last few years? Have there been any court decisions where you live regarding school desegregation? Has busing been ordered? If so, has it worked?**

Though forced busing has not been used to achieve desegregation in Utah, other techniques such as closing schools with high percentages of minorities have been incorporated into desegregation plans. The majority of Utah's African American, Asian and Hispanic population is concentrated along the urban Wasatch Front. The superintendent in your district can tell you who keeps the population figures related to minority populations in your district.

p. 470. **Is discrimination based on race, national origin and alienage a problem in your community? What steps are being taken to eliminate such discrimination?**

This, of course, will vary from community to community. For information on your community, contact agencies that specialize in serving the needs of the poor and minorities, such as the National Association for the Advancement of Colored People (NAACP), Council for Spanish Speaking Organization (CSSO), Japanese-American Citizens League (JACL), and Asian Association in Utah (AAU).

p. 475. **Does your state have an equal rights act? What state and local laws protect against sex discrimination where you live? What agencies enforce these laws?**

Utah does not have an equal rights act but the Utah Anti-Discrimination Act prohibits discrimination based on sex. The Industrial Commission and a committee established by the governor enforce these laws.

p. 498. **What does the law in your state say about permitting lie detector, drug, or aptitude testing of job applicants?**

Utah Code Ann. Section 34-38-1 states that a healthy and productive workplace free from the effects of drug and alcohol are important to employers, employees, and the general public. Therefore, the statute allows testing for drugs and alcohol in the workplace, even where there is no cause to believe that an employee has taken drugs or consumed alcoholic beverages.

Under the federal Employee Polygraph Protection Act of 1988, lie detectors cannot be utilized by employers.

p. 501. **Contact your state or local government employment agency to learn about laws in your area governing young people in the workplace. What kinds of jobs may they hold at different ages and what minimum wages apply to them? Where can you complain if you believe your employer is not following the wage and hour laws?**

Title 34, Chapter 3, of the Utah Code governs the employment of minors. It states that minors 16 years of age or older may work in occupations not declared hazardous or that involve the use of motor vehicles if the minor is licensed to operate the motor vehicle for employment purposes under state law. Minors under the age of 16 may not be permitted to work during school hours except as authorized by the appropriate school authority, and may work only before or after school for less than four hours per day but not before 5:00 a.m. or after 9:30 p.m. unless the next day is not a school day.

A minor under the age of 16 may not be permitted to work in excess of 8 hours in any 24 hour period or more than 40 hours per week. Minors 14 years of age or older may work in occupations in the following non-hazardous areas: retail food services; automobile services (except for the operation of motor vehicles and the use of hoists); public messenger services; janitorial and custodial services; lawn care and snow-removal services; or other similar work as approved by the Utah State Industrial Commission. Minors 14 years of age or older may also work in non-hazardous occupations, including: manufacturing, warehousing, storage, construction, and other occupations not determined harmful by the Commission.

Those minors 12 years of age or older may sell and deliver periodicals or door-to-door merchandise, babysit, work in

agriculture, or any other occupation not determined harmful by the Utah State Industrial Commission. Minors 10 years of age or older may deliver hand-bills, newspapers, advertisements and advertising samples; shine shoes, garden and care for lawns if the work does not include the use of power-driven lawn or snow removal equipment; caddy, or work in any other occupation not deemed harmful by the Commission.

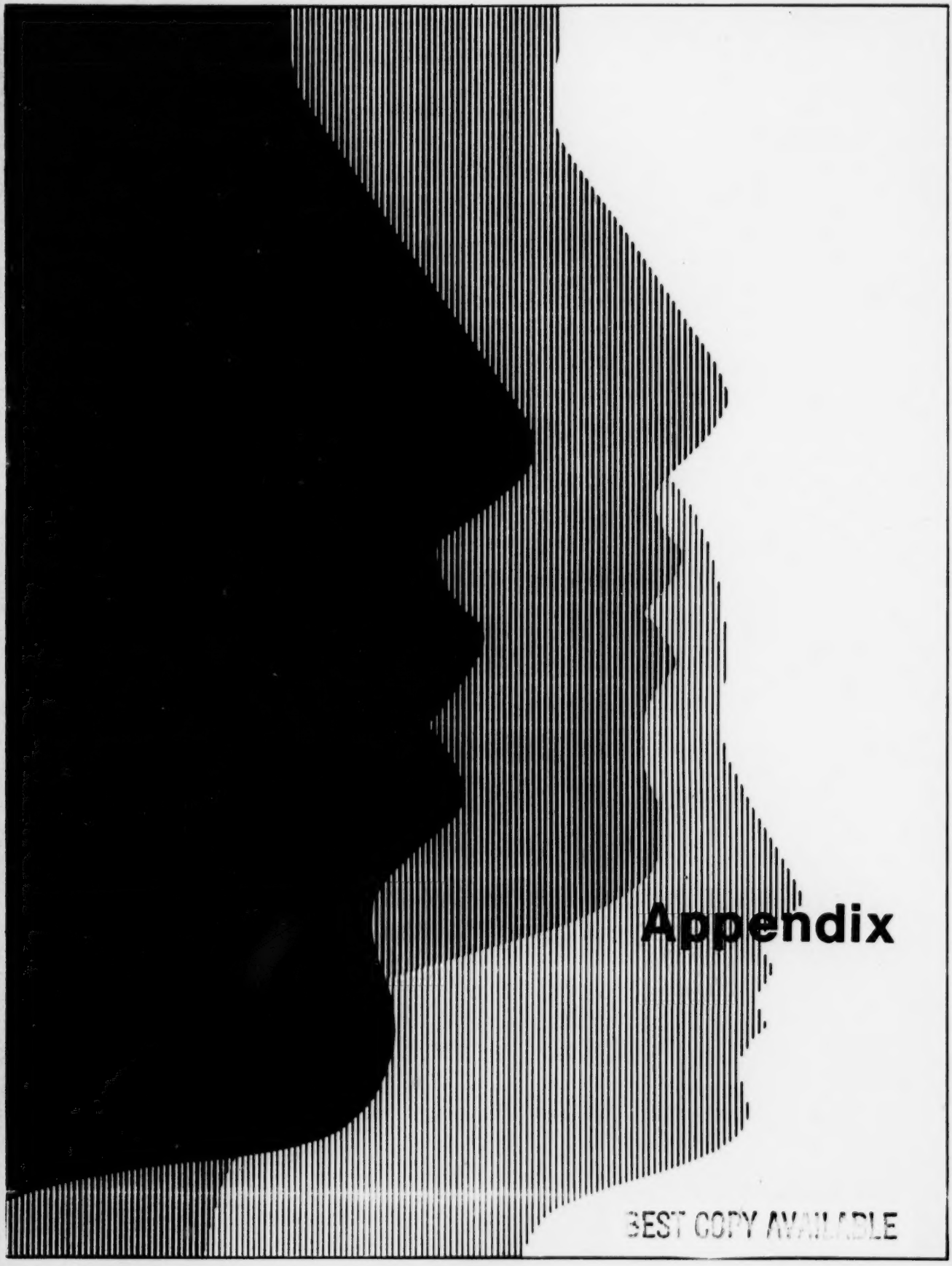
Utah law imposes no specific age limitation or restriction upon minors for home chores and other work done for a parent or guardian, casual work not determined harmful by the Commission, agricultural work, including the operation of power driven farm machinery and the production of agricultural products, or work that has been authorized by the Commission, in writing, if the minor's parents, guardian or custodian consent to the employment of the minor in those occupations.

The Utah State Industrial Commission has determined that minimum wage for the employment of minors is $3.61 per hour and applies only to those occupations that are not regulated by federal law. A person can complain to the Utah State Industrial Commission Labor Division in Salt Lake City at 530-6801 if he or she believes that an employer is not following the wage and hour laws.

p. 520. **Where is the office at which people can apply for unemployment compensation in your area? What are the rules that determine whether they are eligible? How much can they receive each week? For how many weeks can unemployment benefits be paid?**

A person in the Salt Lake City area may apply for unemployment compensation with Job Service, Employment Security Division, at 720 South 200 East, or 5735 South Redwood Road. Applications must be submitted before 3:00 p.m. The laws governing eligibility for compensation are found at Utah Code Ann. Section 35-4-4 and provide that an applicant may receive benefits if he or she (a) has made a claim for benefits with respect to that week in accordance with any rules the Commission may prescribe; (b) has registered for work at, and thereafter has continued to report at, an employment office, in accordance with any rules the Commission may prescribe; (c) is able to work and is available for work during each and every week with respect to which he made a claim for benefits under this Chapter, and acted in good faith in an active effort to secure employment; (d) has been unemployed for a waiting period of one week [which is defined in the Employment Security Act] with respect to each benefit year; (e) has furnished the Commission with information that may be prescribed by rule; and (f) has met certain wage requirements.

An applicant's weekly benefit amount is equal to one-half (1/2) of the average weekly income that the applicant received during his or her first four of the last five completed calendar quarters of his or her employment. The maximum amount that an applicant may receive in unemployment compensation is $240 per week. So long as an applicant is eligible, he or she may receive compensation on a weekly basis for a maximum of 26 weeks.



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GLOSSARY

Accomplice	One associated with another, especially in wrongdoing.
Acquit	To discharge or set free from the charge of an offense by verdict, sentence, or other legal process.
Action	A suit brought in a court; a formal complaint within the jurisdiction of a court of law.
Adopt	To take into one's family the child of another and give him or her the rights, privileges, and duties of a child and heir.
Adultery	Voluntary sexual intercourse between a married person and someone other than his or her spouse.
Agent	A person authorized by another to act for him; one entrusted with another's business.
Alimony	Payments ordered by a court that are made by a person to a divorced spouse for personal support.
Allegation	An accusation that has not been proved. In the context of either juvenile or criminal proceedings, a claim that the subject of the proceedings has violated the law or done something wrong. Such claims are often made by victims, witnesses, and investigating officers.
Annulment	A court order that sets aside a marriage, declaring that it never existed.
Appeal	The process whereby a person dissatisfied with a court's decision takes the case to a higher court for review.
Appellate Court (Appeals Court)	A court in which appeals from a trial court's decisions are heard.
Arson	The deliberate and malicious burning of property.
Assault	An intentional physical attack, or a threat of attack with the apparent ability to carry out the threat so that the victim feels in danger of physical attack or harm.

Bail	Money or property put up by the accused or his or her agent to allow release from jail before trial. The purpose of bail is to assure the court that the defendant will return for trial.
Battered wife/ husband	The victim of any unlawful beating, or other wrongful physical violence or constraint, influcted by his or her spouse.
Booking	The formal process of making a police record of an arrest.
Breach	Failure to keep a promise or perform a duty.
Breach of contract	Failure to carry out the terms of a contract.
Breach of peace	Violation or disturbance of the public tranquility and order.
Broker	An agent who negotiates contracts of purchase and sale.
Burglary	Breaking and entering a building with the intention of committing a felony.
Capital offense	A criminal offense for which the death penalty may be imposed.
Child abuse or neglect	Causing non-accidental harm or threatened harm to a child's physical or mental health or welfare; harm or threatened harm means damage or potential damage to the physical or emotional health and welfare of a child.
Coercion	Forcing a person to act against his or her free will.
Collateral	Money or property given to back up a person's promise to pay a debt.
Common law	Judge-made laws (as opposed to laws made by a legislature or a city or county government). Our common law is based on the legal customs and court decisions of England that were followed in the U.S. judicial system when it was established.
Common-law marriage	A marriage created without legal ceremony by a couple living together and publicly presenting themselves as husband and wife.
Compensation	The pay one receives for work done, or for injury sustained.

Complaint	The first legal document filed in a civil lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court. A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute the crime charged.
Conspiracy	An agreement or plan between two or more persons to commit a crime.
Constitution	A written document containing the most basic rules of a society.
Constitutionality	A quality of a law or act of government as being either in violation or in accordance with rules contained in a constitution.
Contingent fee	A fee stipulated to be paid to an attorney for his or her services in conducting a suit only in case she wins it.
Conviction	The finding of a person guilty of a crime or wrongdoing.
Creditor	A person who provides credit or who loans money or delivers goods or services before payment is made.
Damages	(1) the injuries or losses suffered by one person because of the fault of another; (2) money asked for or paid by a court order for the injuries or losses suffered.
Decree	An order of the court having the force of law.
Deed	A signed and usually sealed instrument containing some legal transfer, bargain, or contract.
Defamation	Written or spoken expression about a person that is false and damages a person's reputation.
Default	Failure to fulfill a legal obligation, such as failing to make a loan payment or appear in court on or within a specified time and date.
Defendant	The person against whom a claim is made. In a civil suit the defendant is the person being sued; in a criminal case the defendant is the person charged with committing a crime.

Deferred payment	Payment of principal or interest postponed to a future time; installment payment.
Discrimination	The act or practice of making a difference in treatment or favor on a basis other than individual merit.
Dismissal	The act of putting out of judicial consideration.
Disposition	The final settlement or result of a case.
Divorce	The ending of a marriage by court order.
Due process of law	A course of legal proceedings carried out regularly and in accordance with established rules and principles.
Dun (dunning)	To make persistent demands upon a troublesome debtor for payment.
Duress	Unlawful pressure on a person to do something that he or she would not otherwise do. Duress may be a defense to a criminal charge.
Electioneering	Working for the election of a candidate or party.
Entrapment	An act by law enforcement officials to induce a person to commit a crime that the person would not have committed otherwise. If proven, entrapment is a valid defense to a criminal charge.
Equal Protection of the law	The guarantee that no person or class of persons shall be denied the same protection of the law which is enjoyed by other persons or classes of persons under like circumstances in regard to their lives, liberty, property, and pursuit of happiness.
Escrow	Money or property that a neutral party, such as a bank, holds for someone until that person fulfills some obligation or requirement.
Eviction	The act by a landlord of removing a tenant from a rental unit.
Evidence	Something accepted and considered by a court to assist arriving at the truth of a matter, whether it be oral statements or witnesses, documents, physical objects, photographs, or recorded data.

Expungement	The cancellation or removal of a criminal or juvenile record.
Extortion	Taking property illegally by force or threat of harm or blackmail.
Federal government	Commonly intended to mean the United States government; but also constituting a form of government in which power is distributed between a central authority and a number of constituent territorial units (states).
Felony	A serious crime for which the punishment may be death or imprisonment for more than one year.
Foreclosure	A proceeding in which a bank or other lender takes a house and sells it if a person fails to make mortgage payments.
Forfeiture	Something to which the right is lost by the commission of a crime or fault, or the losing of something by way of penalty.
Forgery	Making a fake document or altering a real one with the intent to commit fraud.
Fraud	Any deception, lie, or dishonest statement made to cheat someone.
Garnishment	The legally authorized means to take a person's money, through payroll deductions or other means, in order to pay creditors.
Habitual truant	One who regularly stays out of school without permission.
Homicide	The crime of killing a person.
Immune	Free, exempt; protected from some action, such as being sued.
Impotency	Inability to copulate; as a grounds for divorce when there is incapacity to consummate the marriage.
Incarceration	Confinement in a prison or institution.
Incumbent	The holder of an office.
Interlocutory	Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy.

Judicial precedent	A court decision that may serve as an example or rule to permit or justify a similar decision in a later case of a similar nature.
Judgment	A court's decision on a case.
Landlord	The owner of property who leases or rents space. The company or person that manages the property for the owner.
Legal separation	A situation in which two spouses are separated but still maintain some marital obligations.
Liability	All character of debts and obligations that one is bound by law or justice to perform.
Liable	Obligated according to law or equity; responsible.
Libel	A written expression about a person that is false and damages that person's reputation.
Majority	(1) The age at which full civil rights are accorded, usually age 21; the status of one who has attained this age, (2) the group or party whose votes preponderate.
Malice	With respect to defamation, it is the mental state one has when one makes a false statement knowing it is false or with reckless disregard for its truth or falsity.
Manslaughter	The unlawful killing of a human being without express or implied malice.
Mayhem	Willful and permanent crippling mutilation, or disfigurement of any part of the body; needless or willful damage.
Misdemeanor	A crime less serious than a felony, punishable by a prison sentence of one year or less.
Mitigate	To make less severe.
Mitigating circumstances	Factors that may lower the seriousness of an offense; the presence of these factors may be considered by the judge or jury.
Mitigation of damages	A reduction of the amount of damages.

Mortgage	A loan in which land or buildings are put up as security.
Negligence	The failure to exercise the care that a prudent person usually exercises.
Ordinances	Laws enacted by city or county governments.
Parole	The release of a convicted offender from custody prior to the end of a sentence of confinement based upon the person's record of behavior while in custody and subject to certain conditions. During the period of parole, the person is closely supervised and may be returned to custody for violating conditions of parole.
Paternity	Of or pertaining to a legal dispute in which an unwed mother accuses a man of fathering her child.
Petition	(1) To file charges in a juvenile justice system; or (2) a request to a court or public official.
Plaintiff	The person who brings (starts) a lawsuit against another person.
Polygamy	Marriage in which a spouse of either sex possesses a plurality of mates at the same time.
Precedent	Court decisions on legal questions that give direction to future cases on similar questions.
Premeditated	Characterized by fully conscious willful intent and a measure of forethought and planning.
Privacy rights	The right to be let alone; the right of a person to be free from unwarranted publicity.
Probation	The action of suspending the sentence of a convicted offender and giving him freedom during good behavior under the supervision of a probation officer.
Probable cause	A reasonable belief, known personally or through reliable sources, that a person has committed a crime.

Promissory note	A written promise to pay on demand or at a fixed future time a sum of money to a specified person.
Prurient interest	Craving, restlessly; lewd, lustful.
Puffing	An exaggerated statement as to the desirability of a product or service.
Rebate	A return of a portion of a payment.
Redress of grievances	Improving conditions that are felt to be wrong or abusive.
Remand	To send a case back to another court or agency for further action.
Rescind	(1) to annul or cancel (a contract) by restoration of pre-existing conditions; (2) to make void (as an act) by action of the enacting or a superior authority.
Restitution	A court order in which convicted persons are required to pay back or otherwise compensate the victim for their crime.
Robbery	The unlawful taking of property from a person's immediate possession by force or threat of force.
Sectarian	Parochial; of or relating to a church.
Secular	Pertaining to things that are not primarily religious.
Security	(1) Something given, deposited, or pledged to make certain the fulfillment of an obligation; (2) an evidence of debt or of property (as a stock certificate or bond).
Security deposit	Money that a landlord requires a tenant to pay before moving in, used to cover any damages, cleaning costs, or unpaid rent, if such fees arise.
Slander	Spoken expression about a person that is false and damages that person's reputation.
Standards of community	Stability, general recognition, and the conformity to established practice; a type, model or combination of elements accepted as correct or perfect in a particular locale.

Status offenses	Specific acts that are punishable only when committed by persons under a certain age; use of alcohol and tobacco, truancy, runaway, and being ungovernable.
Statute	A law enacted by the legislative branch of government.
Summons	A legal notice informing a person of a lawsuit and telling that person when and where to go to court.
Surveillance	Watching or observing a person; used to refer to observations made without that person's knowledge.
Symbolic speech	Modes of expression other than written or oral languages, e.g. gestures, sit-ins, picketing, and marching.
Tenant	A person renting property.
Theft	An unlawful taking (as in embezzlement or robbery) of property.
Title	The legal right of property ownership.
Trust deed	An instrument in use in some states, taking the place and serving the uses of a mortgage, by which the legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions.
Unconscionable	Totally unfair and one-sided.
Usury	Charging interest for various types of credit at rates higher than the state's legal limit.
Verdict	A jury's decision on a case.
Waive	To give up some right, privilege, or benefit voluntarily.
Warrant	A paper signed by a judge authorizing some action, such as an arrest or a search and seizure.
Warranty	A guarantee or promise made by a seller or manufacturer concerning the quality or performance of goods offered for sale.